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7
8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA

10 JEFFREY E. HOFFMAN,

No. 3:07-CV-2417 MHP

11 Plaintiff,

12 vs.

13 THOMAS R. LLOYD, an individual,
14 EDWARD L. BLUM, an individual, and
15 DOES 1 through 20, inclusive,,

16 Defendants.

17 THOMAS LLOYD,

18 Cross-Plaintiff,

19 vs.

20 JEFFREY E. HOFFMAN, dba H&B
21 PROPERTIES; H&B PROPERTIES, LLC;
22 J. EDWARDS INVESTMENT GROUP,
INC., and NORCAL FINANCIAL, INC.,

23 Cross-Defendants.

24
25 **APPELLANT'S EXCERPTS OF RECORD ON APPEAL**

26 **VOLUME IV**

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DATED: July 13, 2007

GOLDBERG, STINNETT, DAVIS & LINCHEY
A Professional Corporation

By: /s/ Dennis D. Davis
Attorneys for Appellant Jeffrey E. Hoffman

DOCUMENT 15



Signed and Filed: April 30, 2007

Thomas E. Carlson
 THOMAS E. CARLSON
 U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
 FOR THE NORTHERN DISTRICT OF CALIFORNIA

In re)	Case No. 04-32921 TEC
THOMAS LLOYD,)	
)	Chapter 11
Debtor.)	
JEFFREY E. HOFFMAN,)	
Plaintiff,)	
vs.)	Adv. Proc. No. 05-3328 TC
THOMAS R. LLOYD, an individual,)	
EDWARD L. BLUM, an individual, and)	
DOES 1 through 20, inclusive,)	
Defendants.)	
THOMAS LLOYD,)	
Cross-Plaintiff,)	
vs.)	<u>O P I N I O N</u>
JEFFREY E. HOFFMAN, dba H & B)	
PROPERTIES; H & B PROPERTIES, LLC,;)	
J. EDWARDS INVESTMENT GROUP, INC.,)	
and NORCAL FINANCIAL, INC.,)	
Cross-Defendants.)	

Thomas E. Carlson, Bankruptcy Judge.

1 The principal question presented is whether a homeowner who
2 sells his home while facing foreclosure may cancel that sale long
3 after the fact, because the sale contract omitted one of two
4 notices of the right to cancel required under section 1695.5 of the
5 California Home Equity Sales Contracts Act. Because the sale
6 contract failed to provide notice of the right to cancel "in
7 immediate proximity to the space reserved for the equity seller's
8 signature," the contract did not substantially comply with the
9 requirements of section 1695.5 and, as a consequence, the time to
10 cancel the sale never expired.

11 **FACTS**

12 Thomas Lloyd owned and resided in a single-family house in San
13 Francisco (the Residence). In May 2003, he was in default on his
14 mortgage payments and looking for help, when he met Jeffrey
15 Hoffman. Lloyd sold the Residence to Hoffman in a transaction that
16 Lloyd hoped would enable him ultimately to keep the Residence.

17 **1. The Sale of the Residence**

18 On May 28, 2003, Lloyd and Hoffman signed three related
19 contracts regarding the Residence: the Purchase-Sale Agreement; the
20 Lease; and the Option. The Purchase-Sale Agreement provided for
21 Hoffman to purchase the Residence from Lloyd for \$900,000. The
22 Lease provided for Lloyd to rent back the Residence from Hoffman on
23 a month-to-month basis. The Option permitted Lloyd to repurchase
24 the Residence from Hoffman on or before June 30, 2005.¹

25 Of great importance to the present action, the Purchase-Sale
26 Agreement did not contain a notice of the right to cancel next to

27

28 ¹ The Option does not state the price at which Lloyd could
repurchase the Residence.

1 the line for Lloyd's signature. Through the Home Equity Sales
2 Contracts Act² (HESCA), the California Legislature closely regulates
3 sales of residences that occur after foreclosure proceedings have
4 begun, to protect "homeowners in financial distress" against "the
5 importunities of equity purchasers who induce homeowners to sell
6 their homes for a small fraction of their fair market values. . .
7 ." § 1695(a). Under HESCA, the Purchase-Sale Agreement should
8 have contained notice of the right to cancel next to the line for
9 Lloyd's signature, and Lloyd had a right to cancel the sale up to
10 five calendar days after he was accorded proper notice of that
11 right.

12 The sale of the Residence to Hoffman closed on August 25,
13 2003. On that date, Lloyd executed a grant deed, and Hoffman paid
14 the purchase price by taking out a new loan against the Residence
15 in the amount of \$640,000. The proceeds of that loan were used to
16 retire Lloyd's existing loans (\$591,738) and to pay Lloyd
17 approximately \$20,000. Lloyd remained on the premises under the
18 Lease. Hoffman transferred his interest in the Residence to H&B
19 Properties, an LLC in which he was the sole member.

20 **2. Settlement of the Unlawful Detainer Action**

21 Lloyd soon fell behind in the rent payments due under the
22 Lease. H&B Properties filed an unlawful detainer action on June 2,
23 2004. This action was settled before trial via an agreement
24 executed on August 3, 2004 (the Settlement Agreement). The
25 Settlement Agreement allowed Lloyd 90 days either: (a) to find a
26

27 ² HESCA is codified in sections 1695 through 1695.17 of the
28 California Civil Code. Unless otherwise noted, all statutory
references in this decision are to sections of the California Civil
Code.

1 buyer for the Residence; or (b) to repurchase the Residence
2 himself. If Lloyd failed to perform either alternative, the Option
3 and Lease would be terminated, and judgment would be entered
4 against Lloyd for unpaid rent and attorneys fees.

5 Shortly after the parties executed the Settlement Agreement,
6 H&B Properties further encumbered the Residence by obtaining a
7 \$110,000 loan from Norcal Financial, secured by a second deed of
8 trust. Norcal Financial is another entity controlled by Hoffman.

9 Of importance to this case, the Settlement Agreement contained
10 broad mutual releases. Those releases apply to claims unknown at
11 the time of the release, because the parties expressly waived the
12 protections of California Civil Code section 1452. The Settlement
13 Agreement did not expressly address any rights under HESCA.

14 Lloyd was unable to perform under the Settlement Agreement and
15 filed a chapter 11 petition in this court on October 15, 2004.

16 **3. The Notice of Rescission**

17 On October 18, 2004, Lloyd recorded a document entitled Notice
18 of Rescission of Grant Deed Recorded Pursuant to Home Equity Sales
19 Contract (the Notice of Rescission). In that Notice, Lloyd
20 asserted the right under HESCA to rescind both the grant deed to
21 Hoffman and the Purchase-Sale Agreement.

22 Hoffman initially sought to litigate the validity of the
23 Notice of Rescission in the California state courts. He filed a
24 motion seeking relief from the automatic stay to permit him to file
25 a state-court action against Lloyd. Noting that the validity of
26 the Notice of Rescission turned upon California law, this court
27 granted the requested relief from stay. Hoffman filed an action
28 against Lloyd in the San Francisco County Superior Court seeking

1 cancellation of the Notice of Rescission and damages resulting from
2 the slander of title that the Notice created. Lloyd answered and
3 asserted a cross complaint against Hoffman seeking an accounting,
4 quiet title to the Residence, and other relief. On September 14,
5 2005, Lloyd removed the Superior Court action to this court. At
6 this juncture, Hoffman did not file a motion to remand, but instead
7 sought to have this court summarily grant relief in his favor.

8 **4. The Settlement Agreement Does Not Bar Rescission**

9 Hoffman filed a motion to have this court cancel the Notice of
10 Rescission on the ground that it was barred by the general release
11 in the Settlement Agreement. In opposing that motion, Lloyd argued
12 that the release in the Settlement Agreement should not bar
13 cancellation of the sale, because HESCA expressly provides "[a]ny
14 waiver of the provisions of this chapter shall be void and
15 unenforceable as contrary to public policy." § 1695.10.

16 The court determined that it must hold an evidentiary hearing.
17 In light of section 1695.10, the general release would be
18 enforceable, if at all, only if it represented a knowing and
19 intelligent waiver of Lloyd's rights under HESCA. Lloyd had
20 submitted a declaration stating that he was unaware of his right to
21 cancel under HESCA at the time he signed the Settlement Agreement.
22 There thus existed a genuine issue of material fact regarding the
23 enforceability of the release.

24 Before the evidentiary hearing commenced, Hoffman disclosed a
25 copy of a one-page document entitled "Notice Required by California
26 Law" (the Signed Separate-Page Notice). This Notice explained the
27 right to cancel under HESCA, stated the seller could cancel the
28 sale on or before June 4, 2003, and purported to bear Lloyd's

1 undated signature at the bottom. Lloyd's counsel asserted at a
 2 pretrial hearing that the signature was a forgery and stated that
 3 he would object to introduction of the document at trial.

4 Following the evidentiary hearing, the court determined that
 5 the general release in the Settlement Agreement did not bar Lloyd
 6 from cancelling the sale of the Residence under HESCA. After
 7 hearing testimony from the parties and counsel involved in the
 8 negotiation of the Settlement Agreement (during which Hoffman did
 9 not attempt to introduce the Signed Separate-Page Notice), this
 10 court made the finding of fact that Lloyd was unaware of his rights
 11 under HESCA at the time he signed the Settlement Agreement. The
 12 court made the conclusion of law that the general release was not
 13 applicable to Lloyd's rights under HESCA if he was unaware of those
 14 rights at the time he executed that release.³

15
 16 ³ In an unpublished Decision After Trial filed on March 20,
 17 2006, this court explained its conclusions of law in the following
 language.

18 I conclude that the release was effective with
 19 respect to Lloyd's rights under Section 1695 only if:
 20 (1) the release occurred in the settlement of a ripe
 21 controversy in which the significance of those rights had
 22 become apparent; and (2) the release constituted a
 23 knowing and intelligent waiver of those rights. In so
 24 concluding, I note the following. First, the California
 25 Legislature expressly provided that rights under Section
 26 1695 cannot be waived. Cal. Civ. Code § 1695.10.
 27 Although I do not believe that the Legislature meant to
 28 bar settlement of ripe claims arising under Section 1695,
 the anti-waiver provision suggests that any such
 settlement should be attended with adequate safeguards.
 Second, California courts have held that any waiver of an
 important statutory right must be knowing and
 intelligent. Cathay Bank v. Lee, 14 Cal.App. 4th 1533,
 1539 (1993); accord In re Acosta, 182 B.R. 561, 566-67
 (N.D.Cal. 1994). Third, Section 1695 is important
 consumer protection legislation, much like the Federal
 Truth-in-Lending Act. Thus, I find both persuasive and
 pertinent a decision in which a general release that did
 not specifically acknowledge the right to rescind under
 TILA was held not to bar the later exercise of that
 right. Mills v. Home Equity Group, Inc., 871 F.Supp.

1 5. Summary Judgment Granted

2 Following the denial of Hoffman's motion, Lloyd filed a motion
3 for summary judgment. He argued that Hoffman, as the equity
4 purchaser, had the duty to comply with the HESCA requirements
5 regarding notice of the right of cancellation. § 1695.5(a). He
6 argued that the Purchase-Sale Agreement did not comply with those
7 notice requirements because, among other reasons, it failed to
8 provide notice of the right to cancel next to the space for the
9 seller's signature (the Next-to-Signature Notice). § 1695.5(a).
10 He argued that the right to cancel never expired and that the
11 Notice of Rescission was timely, because proper notice of that
12 right had never been given. § 1695.5(d).

13 In support of the motion for summary judgment, Lloyd submitted
14 a declaration stating that on May 28, 2003, he signed only three
15 documents (the Purchase-Sale Agreement, the Lease, and the Option),
16 and that none contained the Separate-Page Notice.

17 Hoffman opposed the motion for summary judgment, contending
18 that he had substantially complied with the notice requirements of
19 HESCA. Hoffman argued that the Signed Separate-Page Notice
20 fulfilled the purpose behind the required Next-to-Signature Notice.
21 In support of his argument, Hoffman submitted his own declaration,
22 in which he stated that the Signed Separate-Page Notice was part of
23 his business records.

24 This court granted summary judgment for Lloyd regarding
25 Hoffman's failure to comply with the notice requirements of HESCA
26 and the timeliness of Lloyd's Notice of Rescission. Hoffman, as

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28 1482, 1485-86 (D.D.C. 1994).

1 the equity purchaser, had the duty to show compliance with the
2 notice requirements of HESCA. § 1695.6(a). To have any hope of
3 showing substantial compliance with the Next-to-Signature Notice
4 requirement, Hoffman had to offer admissible evidence that Lloyd
5 had signed the Separate-Page Notice on the same date he signed the
6 Purchase-Sale Agreement. Lloyd's purported signature was not
7 dated. Hoffman's declaration did not state that Hoffman saw Lloyd
8 sign the Notice, and therefore did not constitute admissible
9 evidence that Lloyd signed it at the same time he signed the
10 Purchase-Sale Agreement. Hoffman had not requested further time
11 under Rule 56(f) to obtain such evidence. In light of Hoffman's
12 failure to comply with the notice requirements of HESCA, the time
13 to cancel never ran, and the Notice of Rescission was therefore
14 timely. § 1695.5(d).

15 On the basis of the summary judgment, the court ordered the
16 dismissal of Hoffman's claims for slander of title and for
17 cancellation of the Notice of Rescission. The court also stated
18 its intent to grant Lloyd's claim to quiet title to the Residence
19 in his name. The court reserved the issue of whether Lloyd should
20 be required to return any consideration received as a condition of
21 cancelling the sale, and did not immediately enter judgment on any
22 of the claims.

23 **6. Conditions on Rescission**

24 The parties briefed the question whether any conditions should
25 be imposed on Lloyd's cancellation of the sale. Hoffman asked that
26 Lloyd be required to pay more than \$500,000 to restore Hoffman to
27 his former position. He sought reimbursement for many categories
28 of expenses he had incurred: mortgage interest, property taxes,

1 transfer taxes, maintenance, improvements, insurance, loan fees,
2 management fees, attorneys fees, and unpaid rent. Lloyd
3 acknowledged that he must return any net value received. He
4 argued, however, that much of the amount Hoffman sought did not
5 represent value Lloyd received, and that the value Lloyd did
6 receive was fully offset by the increased debt against the property
7 Lloyd would now be required to pay. The court issued a tentative
8 ruling that no reimbursement would be required, and scheduled a
9 hearing for February 28, 2007 to allow the parties to address the
10 question further.

11 7. The Motion to Reopen the Summary Judgment

12 Hoffman responded to this tentative ruling by attempting to
13 reopen the ruling granting Lloyd's motion for summary judgment.
14 Hoffman first argued that the Signed Separate-Page Notice had been
15 sufficiently authenticated by Hoffman's declaration stating that
16 Notice to be part of his business records, and by the similarity
17 between the signature on the Notice and Lloyd's signatures on the
18 Purchase-Sale Agreement, Lease, and Option. He also argued that
19 because the Notice itself was dated May 28, 2003, it constituted
20 sufficient evidence that Lloyd signed it on that date to create a
21 triable issue of fact. Hoffman next sought to reopen the summary
22 judgment by offering new evidence. He submitted a declaration from
23 Asher Robertson, the broker who represented Lloyd in the sale to
24 Hoffman, stating that Hoffman had signed the Separate-Page Notice
25 on the same date he signed the Purchase-Sale Agreement, Lease, and
26 Option.

27 In opposing Hoffman's motion, Lloyd first disputed that
28 summary judgment had been improperly granted. Even if the Signed

1 Separate-Page Notice was dated May 28, 2003, the signature on the
2 Notice was undated, and Hoffman had offered no evidence to
3 controvert Lloyd's declaration that he did not sign the Separate-
4 Page Notice on May 28th. Lloyd next contended that Hoffman should
5 not be allowed to offer the Robertson declaration at such a late
6 date, because Hoffman had met with Robertson for several hours in
7 January 2006, well before the summary judgment motion.

8 At the February 28, 2007 hearing, it became apparent that
9 there remained two legal questions the court must resolve. First,
10 the parties agreed that the court should determine whether the
11 Signed Separate-Page Notice would constitute substantial compliance
12 with the HESCA notice requirements, before considering (or
13 reconsidering) the factual question whether Lloyd had signed that
14 notice at the same time he signed the Purchase-Sale Agreement.
15 Second, the court should determine what categories of reimbursement
16 Lloyd must make as a condition to cancellation of the sale. If the
17 legal standard Lloyd urged was correct, Hoffman would not be
18 entitled to reimbursement, even if Hoffman prevailed regarding the
19 relevant factual disputes.

20 **DISCUSSION**

21 **I.**
22 **COMPLIANCE WITH HESCA REQUIREMENTS**
23 **REGARDING NOTICE OF RIGHT TO CANCEL, AND**
24 **THE TIMELINESS OF THE NOTICE OF RESCISSION**

25 **1. Statutory Framework**

26 The California Legislature enacted HESCA in 1979 to protect
27 homeowners in foreclosure from fraudulent schemes by home equity
28 purchasers. The Legislature found that homeowners in financial
distress were often induced to sell their homes for a small

1 fraction of their market value through various types of pressure
2 and misrepresentation.⁴ HESCA protects homeowners by: (1) requiring
3 home equity sales contracts to be in writing and to contain certain
4 disclosures; (2) providing the equity seller an opportunity to
5 cancel the sale; and (3) prohibiting the equity purchaser from
6 paying consideration, receiving a conveyance, or encumbering the
7 property until the right to cancel has expired. §§ 1695.2 through
8 1695.6.

9 The protections of HESCA apply to the sales of residential
10 property of 1-4 units that the seller occupies as his or her
11 principal residence, and against which there is an outstanding
12 notice of default under a deed of trust or mortgage. § 1695.1(b).
13 The statute expressly excludes from its coverage various types of
14 sales posing less opportunity for abuse: foreclosure sales, deeds
15 in lieu of foreclosure, sales directed by court order, sales to a
16 spouse or blood relative, and sales to a person who intends to
17 reside in the property. § 1695.1(a).

18 HESCA closely regulates the form of home equity sales
19 contracts. Such contracts must be in writing, must state the total
20 consideration to be paid and the terms of payment, and must state
21 the time at which possession is to be transferred, and the terms of
22 any rental agreement. §§ 1695.2, 1695.3. The contract must also
23 contain two types of notices: (1) a notice of the seller's right to
24 cancel, described in more detail below; and (2) a notice that the
25 buyer cannot ask the seller to sign any deed or other document
26 until the right to cancel has expired. §§ 1695.3(h), 1695.5(a).

27
28 ⁴ In section 1695, the Legislature made detailed findings and
conclusions, which are set forth in more detail in part II.4,
infra.

1 The equity seller's right to cancel is the heart of the
2 statutory scheme. The equity seller may cancel the contract until
3 the earlier of midnight of the fifth business day after he or she
4 signs a contract "that complies with this chapter," or 8:00 a.m. on
5 the day scheduled for a foreclosure sale. § 1695.4(a). The seller
6 may exercise the right to cancel by delivering to the equity
7 purchaser any writing indicating the seller's intention to cancel
8 the contract. § 1695.4(b), (c).

9 The written contract must contain two separate notices of the
10 right to cancel. The first of these notices is what I shall call
11 the Next-to-Signature Notice. The contract

12 shall contain in immediate proximity to the space
13 reserved for the equity seller's signature a conspicuous
14 statement . . . as follows: "You may cancel this contract
15 for the sale of your house without any penalty or
16 obligation at any time before (date and time of day).
17 See the attached notice of cancellation form for an
18 explanation of this right."

19 § 1695.5(a).

20 The second of these notices is what I shall call the Separate-
21 Page Notice. The contract must be accompanied by a "notice of
22 cancellation" on a separate page attached to the contract that
23 states the deadline for cancellation, explains how the seller may
24 cancel the contract, and contains a space in which the seller may
25 indicate his or her intent to exercise the right to cancel.

26 § 1695.5(b).

27 HESCA states expressly that the right to cancel does not
28 expire before the seller has received the required notices.
29 Section 1695.5(d) states "[u]ntil the equity purchaser has complied
30 with this section [governing notice of the right to cancel], the
31 equity seller may cancel the contract." Section 1695.4(a) provides

1 that the five-day cancellation period begins when "the equity
2 seller signs a contract that complies with this chapter."

3 To make the right to cancel more effective, the equity
4 purchaser may not pay any consideration, accept a deed, record a
5 deed, or transfer or encumber the property until the right to
6 cancel has expired. § 1695.6(b). Thus, the Legislature
7 contemplated that the equity seller would not have to return any
8 consideration, or undo any other aspect of the contemplated sale,
9 as a condition of cancelling the sale contract. The statute also
10 states that the seller's right to cancel is "[i]n addition to any
11 other right of rescission. . . ." § 1694.5(a).

12 The equity seller is not protected against third parties who
13 in good faith and without knowledge "of a violation of this
14 chapter" purchase the property for value from the equity purchaser
15 or who loan money to the equity purchaser secured by the property.
16 § 1695.6(b)(3).

17 HESCA provides that an equity seller may recover damages and
18 attorneys fees if the equity purchaser does not promptly and
19 "without condition" honor a timely notice of cancellation.
20 § 1695.7. The court must treble any actual damages resulting from
21 the equity purchaser encumbering the property before the
22 cancellation period has expired. Id.

23 2. Facts Related to Compliance with the Statute

24 The Purchase-Sale Agreement did not contain the Next-to-
25 Signature Notice required under section 1695.5(a). The parties
26 used a standard-form purchase-sale agreement that did not contain
27 or provide room for such a notice next to the signature line.

28

1 Lloyd may, however, have signed the Separate-Page Notice. As noted
2 above, this is disputed. For the purpose of the present inquiry, I
3 will assume that Lloyd signed the Separate-Page Notice on the same
4 day he signed the Purchase-Sale Agreement.

5 Whether the equity sale contract contained the required
6 notices of right to cancel determines whether Lloyd timely
7 exercised the right to cancel. As noted above, HESCA states in two
8 different places that the time limit on the right to cancel does
9 not begin to run until the equity seller signs a contract that
10 provides the required notices of that right. §§ 1695.4(a),
11 1695.5(d).

12 Lloyd contends that he timely exercised the right to cancel,
13 because the contract he signed did not contain the Next-to-
14 Signature Notice. Hoffman contends that Lloyd did not timely
15 exercise the right to cancel, because the Purchase-Sale Agreement
16 together with the Signed Separate-Page Notice *substantially*
17 *complied* with the statutory requirements. Hoffman contends that
18 Lloyd's signature on the Separate-Page Notice brought that notice
19 to Lloyd's attention, thereby fulfilling the statutory
20 purpose behind the Next-to-Signature Notice.⁵

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⁵ The contract also did not contain the notice required by section 1695.3(h), stating that the equity purchaser cannot ask the equity seller to sign any deed until the right to cancel has expired. It appears, however, that the failure to provide this notice is immaterial. If the contract substantially complied with the statutory requirements regarding notice of the right to cancel, the right to cancel expired before Lloyd signed any deed. If the contract did not substantially comply, the right to cancel has never expired, without regard to any violation of section 1695.3(h).

1 3. The Doctrine of Substantial Compliance

2 The California Supreme Court defined "substantial compliance"
3 regarding consumer-protection laws in Stasher v. Harger-Haldeman,
4 58 Cal. 2d 23 (1962). The statute at issue there required
5 contracts concerning conditional sales of motor vehicles to be in
6 writing and to contain various notices regarding purchase price and
7 payments. The court set forth the following test for determining
8 whether the notices given satisfied the requirements of the
9 statute.

10 Substantial compliance, as the phrase is used in the
11 decisions, means actual compliance in respect to the
12 substance essential to every reasonable objective of the
13 statute. But when there is such actual compliance as to
14 all matters of substance then mere technical
15 imperfections of form or variations in mode of expression
16 by the seller, or such minima as obvious typographical
17 errors, should not be given the stature of non-compliance
18 and thereby transformed into a windfall for an
19 unscrupulous and designing buyer.

20 Id. at 29.

21 The California Court of Appeal applied Stasher to a notice
22 requirement similar to the one involved here in Malek v. Blue Cross
23 of California, 121 Cal.App. 4th 44 (2004). Malek involved Health
24 and Safety Code section 1363.1, which provides that an arbitration
25 agreement in a health care plan is enforceable only if notice of the
26 arbitration provision is prominently displayed "immediately before
27 the signature line" and clearly discloses that the parties are
28 giving up their constitutional right to trial in a court of law.
29 Id. at 50. The enrollment form at issue disclosed that the parties
30 relinquished their right to trial "in a court of law before a jury."
31 This notice, however, was not displayed immediately before the
32 signature line. Id. at 61.

1 Malek held that the notice provided did not substantially
2 comply with the statute. The court reasoned that placement of the
3 notice next to the signature line was essential to one of the
4 objectives of the statute.

5 The purpose of section 1363.1 is to disclose the
6 requirement to arbitrate and to ensure a knowing waiver of
7 the right to a jury trial. . . . [T]here is no indication
8 that the Maleks knowingly waived their right to a jury
9 trial based on the juxtaposition of the signature line.
10 The arbitration provision is on the left-hand side of the
11 enrollment form while the signature line is on the lower
12 right-hand side of the form. The signature line appears
13 directly below the authorization to obtain or release
14 medical information. This placement is not a technical
15 defect of form because it leaves in doubt whether the
16 Maleks knowingly waived their right to a jury trial.
17 Under these circumstances, the statutory objectives of
18 section 1363.1 have not been met.

19 Id. at 72-73 (emphasis in original).

20 Stasher and Malek do not directly resolve the present case.

21 Stasher does tell us, however, that substantial compliance means
22 actual compliance with every reasonable purpose of the statute.

23 Malek tells us that placement of a notice next to the signature line
24 of a contract may be essential to the purpose of a statute.

25 4. Does the Present Contract Substantially Comply with Section
26 1695.5?

27 To determine whether Hoffman substantially complied with
28 section 1695.5, we must determine whether the legislative purpose
behind the Next-to-Signature Notice is satisfied by Lloyd's
signature on the Separate-Page Notice.

 The Legislature stated that the right to cancel is intended to
help homeowners make sound decisions while they are under the
strain of foreclosure proceedings. The "Legislative findings and
declarations" state in relevant part:

 (a) The Legislature finds and declares that . . .
[d]uring the time period between the commencement of

1 foreclosure proceedings and the scheduled foreclosure
2 sale date, homeowners in financial distress, especially
3 the poor, elderly, and financially unsophisticated, are
4 vulnerable to the importunities of equity purchasers . . .

5 (b) The Legislature declares that it is the express
6 policy of the state to preserve and guard the precious
7 asset of home equity, and the social as well as the
8 economic value of homeownership.

9 (d) The intent and purposes of this chapter are the
10 following:

11 (1) To provide each homeowner with information
12 necessary to make an informed and intelligent decision
13 regarding the sale of his or her home to an equity
14 purchaser [and] . . . to afford homeowners a reasonable
15 and meaningful opportunity to rescind sales to equity
16 purchasers

17 (2) This chapter shall be liberally construed to
18 effectuate this intent and to achieve these purposes.

19 § 1695.

20 The most important expression of legislative purpose, of
21 course, is the language of the statute itself. Cal. School
22 Employees Ass'n. v. Governing Bd. of the Marin Cmty. Coll. Dist., 8
23 Cal. 4th 333, 338 (1994) (en banc). A salient characteristic of
24 HESCA is that it requires two notices of the right to cancel: the
25 Next-to-Signature Notice and the Separate-Page Notice. Under the
26 oft-cited doctrine that courts must attempt to give effect to all
27 provisions of a statute, I assume that each of the required notices
28 serves a function the other does not. Cal. Code Civ. Proc. § 1858;
29 Parris v. Zolin, 12 Cal. 4th 839, 845 (1996). More specifically,
30 because the Separate-Page Notice explains the right to cancel in
31 more detail than the Next-to-Signature Notice, I must assume that
32 the Next-to-Signature Notice provides some separate, additional
33 benefit.

1 It is not hard to discern the benefit to be derived from the
2 Next-to-Signature Notice: the equity seller is more likely to
3 notice it. People of all degrees of sophistication understand the
4 importance of the *signing* of a written contract. It is at that
5 stage that the seller should be focused most carefully on the
6 details of the transaction. I conclude that the Legislature
7 required that notice of the right to cancel be placed "in immediate
8 proximity" to the signature line to increase the likelihood that
9 the equity seller would effectively comprehend that right. While
10 the Separate-Page Notice provides a full description of the right
11 to cancel, it does not have the same ability to grab the attention
12 of the equity seller by being in the seller's field of vision at
13 the key moment when the seller executes the contract.

14 Does Lloyd's signature⁶ on the Separate-Page Notice make up for
15 Hoffman's failure to place a notice next to the signature line on
16 the Purchase-Sale Agreement?

17 The Legislature could have required the equity seller to sign
18 and date the Separate-Page Notice. By requiring instead that
19 notice be placed next to the signature line of the sale contract,
20 the Legislature determined that the signing of the sale contract
21 provides a unique opportunity to draw the seller's attention to the
22 right to cancel. Such a determination is not unreasonable. It is
23 reasonable to assume that most people who sell a home view the
24 signing of the sale contract as the crucial event, and treat the
25 numerous other papers they complete as formalities subsidiary to
26 that event.

27 _____
28 ⁶ As noted above, for the purpose of this decision, the court
assumes without deciding that Lloyd signed the Separate-Page Notice
on the same date he signed the Purchase-Sale Agreement.

1 I determine that actual compliance with the Next-to-Signature
2 Notice requirement is essential to the purpose of HESCA. This is
3 so because of the Legislature's express finding that homeowners in
4 foreclosure are often pressured to make poor decisions, the central
5 role of the right to cancel in the statutory scheme for helping
6 homeowners to avoid poor decisions, and the existence of a
7 reasonable basis to believe that placing notice of the right to
8 cancel next to the signature line of the sale contract affords a
9 unique opportunity to draw attention to that right. Thus, the
10 Purchase-Sale Agreement, even with the Signed Separate-Page Notice,
11 does not substantially comply with the requirements of section
12 1695.5, because it is not in "actual compliance in respect to the
13 substance essential to every reasonable objective of the statute."
14 Stasher, supra, 58 Cal 2d. at 29.

15 II.
16 CONDITIONS UPON CANCELLATION

17 Hoffman contends that Lloyd should be permitted to cancel the
18 sale only upon tendering to him more than \$500,000, the amount
19 Hoffman contends is necessary to restore him to his former
20 position. Lloyd concedes that the court may require him to return
21 value he received to prevent unjust enrichment. Lloyd argues,
22 however, that when all facets of the transaction are properly
23 accounted for, he received no net value. The most important
24 difference between the parties concerns the viewpoint the court
25 should apply to the question of restitution. Hoffman argues that
26 he must be restored to the *status quo ante*, even though he is the
27 party responsible for the circumstances justifying cancellation of
28 the contract. Lloyd argues the contrary.

1 1. The Appropriate Legal Standard

2 California law does not support Hoffman's theory. The Civil
3 Code instructs the courts to prevent unjust enrichment of the
4 rescinding party whenever possible, but does not require that the
5 party against whom rescission is invoked be restored to the status
6 quo ante. Section 1691 states that the party rescinding a contract
7 must offer to "[r]estore to the other party everything of value
8 which he has received from him under the contract. . . ." Section
9 1692 states in relevant part:

10 If in an action or proceeding a party seeks relief based
11 upon rescission, the court may require the party to whom
12 such relief is granted to make any compensation to the
other which justice may require and may otherwise in its
judgment adjust the equities between the parties.

13 Case law confirms that the primary goal is to avoid unjust
14 enrichment when possible, and that the court enjoys broad
15 discretion in setting appropriate conditions upon rescission. See
16 McCoy v. West, 70 Cal. App. 3d 295, 302 (1977).⁷

17 The Restatement of Restitution provides that even restitution
18 aimed at preventing unjust enrichment should not be ordered when
19 that would frustrate the policy giving rise to the right to
20 rescind.

21 A person who renders performance under an agreement
22 that is illegal or otherwise unenforceable for reasons of
23 public policy may obtain restitution . . . as necessary
to prevent unjust enrichment, if the allowance of

24
25 ⁷ Hoffman cites Runyan v. Pacific Air Industries, Inc., 2 Cal.
3d 304, 316 (1970) as stating "[i]t is the purpose of rescission
26 'to restore both parties to their former position as far as
possible.'" Neither Runyan, nor any other case Hoffman cites,
27 actually holds that the party responsible for the circumstances
justifying rescission must be restored to the status quo ante when
28 that would require the rescinding party to restore more than the
value that party received, and when that would impose a loss on the
rescinding party for the benefit of the more culpable party.

1 restitution will not defeat or frustrate the policy of
2 the underlying prohibition.

3 RESTATEMENT (THIRD) OF RESTITUTION § 32 (Tentative Draft No. 3,
4 2004).⁸

5 **2. Accounting for Benefits and Setoffs**

6 Viewed against this standard, Hoffman is entitled to no
7 restitution. Much of the restitution Hoffman seeks does not
8 represent value provided to Lloyd. Furthermore, as explained in
9 the following paragraphs, the value Hoffman did provide Lloyd is
10 more than offset by the increased debt that Hoffman placed on the
11 Residence and that Lloyd will likely have to pay.

12 Lloyd does not dispute that he received value equal to the
13 cash he received and his prior debt that Hoffman paid. Upon
14 closing, Hoffman paid Lloyd \$20,000 in cash. Hoffman also paid off
15 the loans Lloyd had previously taken out against the Residence,
16 which had a balance due of approximately \$592,000.

17 Improvements to the Residence Hoffman made may also represent
18 value Lloyd received. The parties differ largely as to how these
19 improvements should be valued. Hoffman seeks reimbursement of the
20 entire \$14,500 he claims he spent on the improvements. Lloyd
21 contends that the proper measure should be the value of the
22 improvements to him. For the present analysis, I will use
23 Hoffman's figure.

24 Operating expenses Hoffman paid should be considered value
25 provided to Lloyd only for the period Lloyd had possession of the
26 Residence. Hoffman seeks reimbursement of \$163,000 he paid for

27
28 ⁸ The notes accompanying this draft provision provide that it reformulates the applicable rules of sections 197-99 of the Second Restatement of Contracts without altering specific outcomes.

1 property taxes, mortgage interest, insurance, and maintenance
2 during the 40 months between the transfer and the end of 2006.
3 Hoffman argues that if he had not purchased the Residence, Lloyd
4 would have had to make these payments. While this is true, it is
5 also true that if Lloyd had not sold the Residence and had made
6 those payments himself, he also would have enjoyed possession and
7 the other benefits of ownership for the entire 40-month period. It
8 is undisputed that the Residence is now leased to third parties,
9 and that Lloyd has been denied possession of the Residence for at
10 least 15 of the 40 months since the sale closed. It is appropriate
11 to make Lloyd responsible for expenses only for the period he had
12 possession of the Residence. Runyan, supra, 2 Cal. 3d at 315;
13 McCoy, supra, 70 Cal. App. 3d at 301. Thus, Lloyd is properly
14 charged with no more than \$101,875, which represents 25/40 of the
15 \$163,000 claimed.⁹

16 Lloyd should not be deemed to have received the rental value
17 of the Residence in addition to the expenses of maintaining the
18 property for the period he had possession of the Residence. To
19 adjust for both rental value and avoided expenses would constitute
20 double-counting. Charging Lloyd for the property taxes,
21 maintenance, insurance, and mortgage interest Hoffman paid while
22 Lloyd had possession is sufficient to prevent unjust enrichment,
23 and more accurately measures the benefit Lloyd received. McCoy,
24 supra, 70 Cal. App. 3d at 302 (monetary adjustment required upon
25

26 ⁹ Lloyd also contends that Hoffman is not entitled to
27 reimbursement for any interest payments made, because any such
28 amounts would represent payment on a loan subject to rescission
under the Federal Truth-in-Lending Act. I need not reach this
issue because, as noted below, I determine that Lloyd is not
required to make any reimbursement of Hoffman as a condition to
cancelling the sale, without regard to the TILA issue.

1 rescission of sale of property to take account of post-transfer,
2 pre-rescission possession is not rent, but is merely a means to
3 prevent unjust enrichment). Lloyd's possession should not be
4 valued under the terms of the Lease, because Hoffman could not have
5 become Lloyd's landlord without violating the statutory prohibition
6 against taking title before the cancellation period expired.
7 § 1696(b).

8 The other amounts Hoffman seeks do not represent value
9 transferred to Lloyd. Hoffman seeks reimbursement of \$26,500 in
10 fees paid in obtaining the loan used to make the purchase, transfer
11 taxes of \$6,000 paid on the purchase, and \$45,000 in management
12 fees payable to himself for leasing the Residence. Finally,
13 Hoffman seeks reimbursement of \$400,000 in attorneys fees incurred,
14 and to be incurred, in the present action. None of these amounts
15 represent amounts Lloyd would have had to pay but for the transfer
16 to Hoffman.¹⁰

17 The total value Lloyd received from Hoffman is more than
18 offset by the corresponding detriment that Lloyd has suffered in
19 the form of increased debt against the Residence. To effect the
20 purchase, Hoffman obtained a loan from GreenPoint Mortgage in the
21 amount of \$640,000, secured by a deed of trust on the Residence.
22 Later H&B Properties took out a second loan from Norcal Financial
23

24 ¹⁰ Hoffman appears to seek these attorney fees under the fee
25 clause in the Settlement Agreement. As noted above, this court has
26 determined that the release in the Settlement Agreement does not
27 bar Lloyd's right to cancel the sale under HESCA, because of the
28 anti-waiver provisions of section 1695.10. To the extent that
Hoffman seeks to enforce the fee clause to require Lloyd to pay
fees Hoffman incurred in unsuccessfully contesting Lloyd's exercise
of the right to cancel under HESCA, the fee clause should also be
considered an illegal contract. Under section 1695.7, Lloyd is
entitled to recover attorneys fees as the prevailing party.

1 in the amount of \$110,000, secured by a junior deed of trust on the
 2 Residence. The current combined balance on these loans is
 3 approximately \$754,000.¹¹ The debt the Residence is now subject to
 4 exceeds by \$26,125 the sum of all value Lloyd received from
 5 Hoffman.

6	Cash purchase price	\$	20,000
7	Prior debt retired		592,000
8	Adjusted operating expenses		101,875
9	<u>Improvements</u>		<u>14,500</u>
	Sub-total		728,375
	<u>Less debt Hoffman incurred</u>		<u>(754,500)</u>
	Net benefit conveyed	\$	26,125

10 The rescinding party need not restore value received from the other
 11 party where that value has been fully offset by other effects of
 12 the transaction. Gatje v. Armstrong, 145 Cal. 370, 374 (1904).

13 3. Additional Policy Considerations

14 Finally, I determine that imposing any condition on
 15 cancellation of the sale of the Residence would unduly interfere
 16 with both the express language and the policies of HESCA. The
 17 Legislature designed the equity seller's right to cancel not to
 18 require the unwinding of a completed transfer, by expressly
 19 prohibiting the equity purchaser from accepting consideration,
 20 receiving a deed, or encumbering the property before the right to
 21 cancel has expired. § 1695.6(b). Cancellation is more complex
 22

23 ¹¹ It is far from certain that Lloyd will be able to avoid
 24 these encumbrances. HESCA affords broad protection to loans
 25 extended by lenders unrelated to the purchaser, such as GreenPoint
 26 Mortgage. That the transfer to the equity purchaser may be set
 27 aside does not mean that a loan placed on the property by that
 28 equity purchaser may also be set aside. §§ 1695.6(b)(3),
 1695.6(e), 1695.12, 1695.14(c). The holder of the second loan,
 Norcal Financial, is apparently owned by Hoffman, and Hoffman has
 at various times stated that he would cause that loan to be
 released. To date he has not done so. It is not appropriate at
 this stage for this court to disregard for Hoffman's benefit a loan
 that Hoffman continues to assert.

1 here, solely because Hoffman did not take care to ensure that the
2 right to cancel had expired before he completed the purchase. This
3 is a case where Hoffman and Lloyd cannot both be restored to the
4 *status quo ante*, because some of the reimbursements Hoffman seeks
5 are for transactions costs that do not represent value provided to
6 Lloyd, and because those transaction costs were simply lost when
7 the sale was cancelled. In such circumstances, it is Hoffman who
8 should bear the loss. By violating section 1695(b), Hoffman
9 created the circumstances that prevent both parties from being
10 restored to the *status quo ante*. McCoy, supra, 70 Cal. App. 2d at
11 303.

12 I determine that Lloyd need not tender any sum to Hoffman as a
13 condition to cancelling the sale of his Residence to Hoffman. I
14 also determine that the policies embodied in HESCA require that the
15 Residence be restored to Lloyd immediately. § 1695. This court
16 will therefore order immediate entry of a judgment cancelling the
17 sale, quieting title to the Residence in Lloyd, and dismissing
18 Hoffman's claims. Fed.R.Bankr.P. 7054(a); Fed.R. Civ.P.54(b).
19 Lloyd's claims for damages and attorneys fees will be determined at
20 a later date.

21 **CONCLUSION**

22 The Purchase-Sale Agreement did not substantially comply with
23 HESCA, because it did not contain the Next-to-Signature Notice of
24 the right to cancel required under section 1695.5(a). Lloyd's
25 exercise of the right to cancel was timely under section 1695.5(d),
26 because he had not previously been afforded proper notice of that
27 right. No conditions should be placed on Lloyd's right to cancel,

28

1 because Lloyd received no net benefit from the transaction that he
2 should be required to return to Hoffman.

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DOCUMENT 16



Signed and Filed: April 30, 2007


THOMAS E. CARLSON
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

In re)	Case No. 04-32921 TEC
THOMAS LLOYD,)	
)	Chapter 11
Debtor.)	
JEFFREY E. HOFFMAN,)	
Plaintiff,)	
vs.)	Adv. Proc. No. 05-3328 TC
THOMAS R. LLOYD, an individual,)	
EDWARD L. BLUM, an individual, and)	
DOES 1 through 20, inclusive,)	
Defendants.)	
THOMAS LLOYD,)	
Cross-Plaintiff,)	
vs.)	
JEFFREY E. HOFFMAN, dba H & B)	
PROPERTIES; H & B PROPERTIES, LLC,;)	
J. EDWARDS INVESTMENT GROUP, INC.,)	
and NORCAL FINANCIAL, INC.,)	
Cross-Defendants.)	

JUDGMENT AND RULE 54(b) CERTIFICATION

1 On May 15, 2006, the court signed an order granting summary
2 judgment for Defendant Lloyd on the first and second causes of
3 action of Hoffman's complaint (slander of title and cancellation of
4 the notice of rescission), and on the fourth claim for relief in
5 Lloyd's cross-complaint (quiet title). The court declined at that
6 time to immediately enter judgment on any of the claims under Rule
7 54(b).

8 On February 26, 2007, the court held a hearing on the court's
9 tentative ruling regarding whether any conditions should be imposed
10 on Lloyd's cancellation of the sale of his residence to Hoffman.
11 At the hearing, Jeffrey J. Goodrich appeared for Debtor. Dennis D.
12 Davis and Stephen D. Pahl appeared for Jeffrey Hoffman.

13 Upon due consideration, for the reasons stated in the
14 accompanying opinion, and it appearing that there is no just reason
15 for delay and that final judgment should be entered against Hoffman
16 on three claims, the court hereby enters judgment as follows.

17 (1) Judgment is entered in favor of Lloyd and against Hoffman
18 on the first and second causes of action of Hoffman's complaint for
19 slander of title and for cancellation of the notice of rescission.

20 (2) Judgment is entered in favor of Lloyd and against Hoffman
21 on the fourth claim for relief of Lloyd's cross-complaint for quiet
22 title to the real property located at and commonly known as 940
23 Elizabeth Street, San Francisco, California (the Residence).

24 (3) Title to the Residence is hereby quieted in the name of
25 Thomas Lloyd, debtor and debtor-in-possession herein, subject to no
26 monetary claims of Hoffman or the other cross-defendants in this
27 adversary proceeding.

28

1 (4) Pursuant to Federal Rule of Civil Procedure 54(b),
2 incorporated by Fed. R. Bankr. Proc. 7054(a), the court expressly
3 directs entry of final judgment.

4 **END OF JUDGMENT**
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Entered on Docket

May 07, 2007

GLORIA L. FRANKLIN, CLERK
U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

Signed and Filed: May 07, 2007

THOMAS E. CARLSON
U.S. Bankruptcy Judge

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

In re:

THOMAS LLOYD,

Debtor.

Case No. 04-32921-TEC

Chapter 11

JEFFREY E. HOFFMAN,

Plaintiff,

A.P. No. 05-03328

vs.

THOMAS R. LLOYD, an individual, EDWARD L.
BLUM, an individual, and DOES 1 through 20,
inclusive,,
Defendants.

Date: May 4, 2007

Time: 9:30 a.m.

Place: Courtroom 23

235 Pine Street

San Francisco, CA

Judge: The Hon. Thomas E. Carlson

AND RELATED CROSS-ACTION

ORDER DENYING STAY PENDING APPEAL

This matter came on for a status conference in the above-referenced case before The Honorable
Thomas E. Carlson on May 4, 2007. All parties were represented as reflected on the record.

Plaintiff made an oral motion on the record for a stay of the Court's April 30, 2007 Judgment;

FOR THE REASONS STATED ON THE RECORD;

1 IT IS HEREBY ORDERED that Plaintiff Jeffrey E. Hoffman's and Cross-Defendant's Motion for
2 Stay Pending Appeal is denied.

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4 **END OF ORDER**
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7 IN THE UNITED STATES BANKRUPTCY COURT

8 FOR THE NORTHERN DISTRICT OF CALIFORNIA

9 SAN FRANCISCO DIVISION

10

11 In re:

12 THOMAS LLOYD,

13 Debtor.

Chapter 11

Case No. 04-32921-TEC

15 JEFFREY E. HOFFMAN,

16 Plaintiff,

17 vs.

18 THOMAS R. LLOYD, an individual,

19 EDWARD L. BLUM, an individual, and DOES

20 1 through 20, inclusive,,

Defendants.

A.P. No. 05-03328

Date: February 26, 2007

Time: 10:30 a.m.

Place: 235 Pine Street

23rd Floor

San Francisco, CA

21 AND RELATED CROSS-ACTION

22

23

24 **PLAINTIFF'S BRIEF RELATING TO COURT'S**

25 **TENTATIVE RULING OF JANUARY 24, 2007**

26

27

28

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TABLE OF AUTHORITIESCASES

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I. INTRODUCTION

On January 24, 2007, the Court issued a second Tentative Ruling relating to the issue of "Terms For Cancellation Of Deed" in this case, based upon its statement that it had "previously determined that Lloyd was not provided" the cancellation right provided under Sections 1695.3 and 1695.5, and that therefore, Lloyd's cancellation of the contract was timely. The issue was not before the Court, the Court's observation that it decided the issue is not supported by the record and decision of the issue was not necessary to the Court's determination of the issues before it.

Furthermore, Lloyd withheld evidence in the possession of his agent which reflected that Lloyd had been given notice of his cancellation rights. Furthermore, Lloyd had filed, but not served, new litigation with this Court against Hoffman where the issue of notice of cancellation was raised. Lloyd's skirting of procedural rules in failing to have a summons issued or served, has deprived Hoffman of due process.

II. PROCEDURAL BACKGROUND

1. On April 5, 2005, Jeffrey Hoffman filed a complaint in Superior Court seeking cancellation of Lloyd's Notice of Rescission and for damages.

2. On June 16, 2005, Lloyd filed a cross-complaint for declaratory relief, avoidance of fraudulent conveyances and other theories. The cross-complaint does not allege that Hoffman failed to give Lloyd notice of a right of cancellation.

3. On October 15, 2005, Lloyd filed a chapter 11 bankruptcy proceeding. Thereafter, debtor removed the Superior Court case to the Bankruptcy Court, where it was assigned Adversary Proceeding No. 05-03328.

4. On December 21, 2005, this Court's Trial Scheduling Order was filed, ordering that Phase 1 of trial of the matter "concerning the enforceability of the settlement" commence on January 10, 2006.

5. On December 29, 2005, Hoffman filed a trial brief. On January 23, 2006, Lloyd filed a trial brief with respect to the Phase 1 trial. Conspicuously absent from either trial brief is any contention that Hoffman had not provided Lloyd with a notice of right to cancellation.

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6. On January 20, 2006, Lloyd filed a motion for summary judgment, scheduling the hearing for February 17, 2006. A week later, Lloyd filed his supporting legal memorandum. In his supporting declaration, Lloyd admits that he signed the Purchase Agreement, the Lease and the Option Agreement, but asserts that those "were the only documents I signed in connection with the transaction with Mr. Hoffman, other than various closing documents I signed later at the title company." Mr. Lloyd does not specifically deny in his declaration having signed the Notice of Cancellation, nor does define what he meant by "various closing documents."

7. On February 7 and 10, 2006, Hoffman filed a response to the motion for summary judgment.

8. On February 21, 2006, the Court entered its Order Denying Motion For Summary Judgment.

9. On February 28, 2006, a trial was held on the Phase I issue of the enforceability of the settlement agreement.

10. On March 20, 2006, the Court issued its "Decision After Trial (Phase 1)". The Decision recites that the Phase 1 Trial "concerned the affect of a general release executed by Lloyd upon his claims under Section 1695, *et seq.*, of the California Civil Code" and, the Court determined that the "release does not bar Lloyd's claims for rescission and other relief under section 1695." The Court made no finding with respect to whether Lloyd was provided with a notice of right to cancel the contract, nor does the decision suggest that the issue had been determined.

11. On March 24, 2006, Lloyd served a notice scheduling his prior motion for summary judgment for another hearing on April 28, 2006. He did not file additional legal arguments or factual support.

12. On April 13, 2006, Hoffman filed opposition papers to the re-noticed motion for summary judgment, including a declaration of Jeffrey Hoffman, which stated in part that the "Purchase Contract between the parties included a Notice of Cancellation". A copy of the Notice of Cancellation was attached to the declaration.

13. On May 15, 2006, the Court entered its order granting Lloyd's motion for summary judgment, as modified on the record by Lloyd (i.e., limiting the scope of the motion), dismissing

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1 Hoffman's slander of title and "cancellation of cloud on title" causes of action and entering judgment
 2 in favor of Lloyd on his cross-complaint on his quiet title cause of action. Furthermore, the Court
 3 quieted title to the Elizabeth Street property to Thomas Lloyd subject to the monetary claims, if any,
 4 of Hoffman and the other cross-defendants, "which claims shall be determined at trial in this
 5 Adversary Proceeding." The Court's order is silent as to the issue of the Notice of Cancellation.

6 14. On June 1, 2006, the Court issued a Trial Scheduling Order in Adversary Proceeding
 7 05-03328, which provided that trial would commence on October 30, 2006.

8 15. On October 16, 2006, Lloyd filed a new adversary proceeding (No. 06-03165) against
 9 Hoffman and others, alleging a string of intentional torts and a RICO violation arising out of the same
 10 set of facts alleged in this adversary proceeding. Lloyd failed to submit a summons with the
 11 complaint, and on October 17, the clerk directed Lloyd to file an AP cover sheet and proposed
 12 summons "immediately." Nonetheless, Lloyd delayed submitting a summons until early January.
 13 On January 10, 2007, a summons was issued by the court, but has not been served on Hoffman.
 14 Counsel for Hoffman has left a voice mail message, sent an email and a faxed letter to Mr. Goodrich
 15 concerning this matter, but Mr. Goodrich has refused to respond to any of these inquiries.

16 16. When the parties appeared on October 30, 2005, the matter did not proceed to trial.
 17 Instead, the Court decided to first decide the issue of rescission payments. On November 8, 2006, the
 18 Court issued a "Tentative Ruling Re Rescission Payment" reciting that it "held a hearing regarding
 19 the amount (if any) that Lloyd must return to Hoffman (the "Rescission Payment") as a condition of
 20 judicial enforcement of Lloyd's rescission", noting, among other things, that "Lloyd must return any
 21 consideration received from Hoffman."

22 17. On January 17, 2007 Lloyd filed another adversary proceeding against Hoffman (No.
 23 07-03004), also naming the three tenants of the subject property as defendants. A summons was
 24 issued on January 18, but has not been served on Hoffman. The tenants may have been served, as
 25 Hoffman received a copy of an informal answer to the complaint from the tenants.

26 18. On January 17, 2007, Lloyd filed yet another adversary proceeding against Hoffman
 27 (No. 07-03005) seeking a preliminary injunction. No service was ever made on Hoffman. Hoffman
 28 did discover the application for TRO on line and filed an opposition to the TRO. He has never been

1 served, however, with process, nor has he waived service of process.

2 19. Thereafter, on January 24, 2007, the Court issued an additional Tentative Ruling re
3 terms for cancellation of deed in which it recited that it had "previously determined that Lloyd was
4 not provided the notice of right to cancel the contract" and that because no such notice was given,
5 that Lloyd's right to rescission remained open to the present time.

6 7 **III. ARGUMENT**

8 **A. AN ISSUE OF FACT EXISTS AS TO WHETHER LLOYD 9 EXECUTED THE NOTICE OF RIGHT TO CANCELLATION**

10 Summary judgment is appropriate when there is no genuine issue of material facts and the
11 moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56.

12 Material facts are those that might affect the outcome of the case. . . . A dispute as to a
13 material fact is "genuine" if there is sufficient evidence for a reasonable jury to return
14 a verdict for the nonmoving party. The court may not weigh the evidence, and is
15 required to view the evidence in the light most favorable to the nonmoving party.

16 *Gibbons v. Interbank Funding Group*, 208 F.R.D. 278, 281 (N.D. Cal. 2002) (citing *Anderson v.*
17 *Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986)).

18 Further,

19 Where the moving party will have the burden of proof at trial, it must affirmatively
20 demonstrate that no reasonable trier of fact could find other than for the moving party.
21 On an issue where the nonmoving party will bear the burden of proof at trial, the
22 moving party can prevail merely by pointing out to the district court that there is an
23 absence of evidence to support the nonmoving party's case. . . . If the moving party
24 meets its initial burden, the opposing party must then set forth specific facts showing
25 that there is some genuine issue for trial in order to defeat the motion. . . . Regardless
26 of whether plaintiff or defendant is the moving party, each party must "establish the
27 existence of the elements essential to its case, and on which it will bear the burden of
28 proof at trial."

29 *Id.* at 281-282 (citations omitted). "In ruling on a motion for summary judgment, it is not the
30 function of the court to resolve existing factual issues through a 'trial by affidavits.'" 586 F.2d 1315,
31 1318 (9th Cir. 1978) (citations omitted). Notably, unsupported allegations of counsel may be
32 disregarded in determining whether genuine issues of fact exist to be tried. *Wade v. New York*
33 *Telephone Co.*, 500 F.Supp. 1170 (D.C.N.Y. 1980).

34 Moreover, "inferences drawn from underlying facts must be viewed in the light most

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1 favorable to the party opposing the motion.” *Safeco Credit Co., Inc. v. U.S. Bancorp Leasing &*
 2 *Financial, Inc.*, 833 F.Supp. 833, 834 (Dist.Or. 1993) (citing *Valandingham v. Bojorquez*, 866 F.2d
 3 1135, 1137 (9th Cir. 1981)). “If, as to the issues on which summary judgment is sought, there is any
 4 evidence in the record from which a reasonable inference could be drawn in favor of the opposing
 5 party, summary judgment is improper.” *Gummo v. Village of Depew, New York*, 75 F.3d 98, 107
 6 (2nd Cir. 1996) (citations omitted).

7 On January 20, 2006, defendant Lloyd filed a motion for summary judgment, supported by a
 8 declaration of Mr. Lloyd in which he stated that he executed the Purchase Agreement, the Lease and
 9 Option Agreement, but asserted that those “were the only documents I signed in connection with the
 10 transaction with Mr. Hoffman, other than various closing documents I signed later at the title
 11 company.” Mr. Lloyd did not identify which documents he signed at the title company.
 12 Furthermore, his declaration makes no specific reference to the notice of cancellation document and
 13 he (as opposed to his attorney) never specifically denied under oath that he signed it. Lloyd did not
 14 deny that his signature appears on the Notice of Cancellation, nor does he explain why the Notice of
 15 Cancellation is dated May 28, the same date as the other documents he admits he signed on that date.
 16 On the other hand, Mr. Hoffman filed a declaration on January 26, 2006, in which he testified that the
 17 “purchase included a Notice of Cancellation” and attached the notice to his declaration, showing
 18 Lloyd’s signature and a date of May 28, 2003.

19 At the April 28, 2006 hearing on the motion for summary judgment, Mr. Goodrich argued that
 20 the Notice of Cancellation was not properly authenticated (transcript page 8) because “Mr. Hoffman
 21 could not tell us whose handwriting that was” (transcript page 11). Mr. Goodrich continues that “Mr.
 22 Lloyd thinks this is a forgery” (transcript page 13) although no such evidence was offered. Goodrich
 23 goes on to state that he “objected to its admissibility, and Mr. Pahl withdrew it” (transcript page 14)
 24 although the objection and withdrawal do not appear in the April 28 transcript, and the evidence was
 25 offered in a declaration which identifies April 28 as the hearing date.

26 Lloyd’s arguments concerning authenticity were wrong as a matter of law. Mr. Lloyd’s
 27 signature on the Notice of Cancellation **appears** to be the same signature as that on the other
 28 Purchase Agreement documents he admits are authentic. One way to authenticate the genuineness of

1 handwriting is for the trier of fact to compare a contested writing with an authenticated specimen.
 2 Evidence Code §901(b)(3). That was sufficient to authenticate the signature of Thomas Lloyd on the
 3 Notice of Cancellation. Additionally, Mr. Hoffman's sworn testimony that the Purchase agreement
 4 included a notice of cancellation, and that the Notice of Cancellation is part of the packet of
 5 documents he submits was, if not the most eloquent or complete evidence, certainly enough to
 6 overcome the vague testimony of Mr. Lloyd.

7 As set forth in the Asher Robertson declaration filed herewith, Asher Robertson (Lloyd's
 8 broker) has testified that Mr. Lloyd did in fact execute the Notice of Cancellation along with the other
 9 purchase documents on May 28, 2003. Furthermore, Robertson explains the delay of about six weeks
 10 between the time Lloyd signed the documents and the time escrow closed was a function of Mr.
 11 Lloyd's stalling, trying to see if he could get a better deal from another lender (Robertson declaration
 12 ¶ 4).

13 **B. THE COURT'S RULING OF JANUARY 24, 2007, GOES**
 14 **BEYOND THE ISSUES PRESENTED TO IT AND PROVEN AT**
 15 **THE SUMMARY JUDGMENT HEARING**

16 It is clear that, "The trial court may not enter a summary judgment which rests on a chain of
 17 inferences from subsidiary facts not conclusively established in the record." In *Pepper v. Tanner,*
 18 *Inc.*, 563 F.2d 391, 393 (9th Cir. 1977). Applying this principle, the Court in *Pepper* found that the
 19 lower court's entry of summary judgment in favor of the defendant was in error where it necessarily
 20 implied a determination that the plaintiff was in fact transacting business in the state of Arizona at the
 21 time when the contracts at issue were entered into, and also implied a determination that the Arizona
 22 statute in question did not violate the commerce clause as applied to the disputed contracts. *Id.*

23 These issues, as stated by the Court, ultimately depended upon a precise and detailed factual
 24 inquiry. *Id.* However, on a motion for summary judgment, trial courts are not permitted to weigh the
 25 evidence, pass upon credibility, or "speculate as to ultimate findings of fact." *Id.* (quoting *Fortner*
 26 *Enterprises, Inc. v. United States Steel*, 394 U.S. 495, 496, 89 S.Ct. 1252, 1260, 22 L.Ed.2d 495
 27 (1969)). The Court found that there were not enough facts shown to support the lower court's
 28 conclusion that the plaintiff was constantly in Arizona and to conclude from that that the plaintiff was
 transacting business there. *Id.* at 395. "While suitable inferences may be drawn by the trial in ruling

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1 on a motion for summary judgment, all such inferences are to be drawn against the moving party.”
 2 *Id.* (citing *United States v. Diebold Inc.*, 369 U.S. 654, 82 S.Ct. 993, 8 L.Ed.2d 176 (1962) (per
 3 curiam); *Driscoll v. United States*, 525 F.2d 136 (9th Cir. 1975)).

4 A brief history of Mr. Lloyd’s litigation against Mr. Hoffman illustrates the chaotic nature of
 5 this litigation, and reflects that the issue of whether Lloyd signed off on the Notice of Cancellation
 6 acknowledgement on May 28, 2003, was not raised in Lloyd’s motion, nor was it necessary to the
 7 Court’s decision. Furthermore, the issue of whether the signature was not authenticated was not
 8 established by clear, unequivocal sworn testimony, but by argument and exaggeration of counsel.

9 Mr. Lloyd initiated his barrage of litigation against Mr. Hoffman by the filing of a cross-
 10 complaint on June 16, 2005, in which he sought to avoid fraudulent transfers, quiet title, obtain an
 11 accounting, for a determination of the validity, extent and priority of liens and to object to Hoffman’s
 12 claims. That dispute proceeded to a “Phase I” trial on the limited issue of the enforceability of the
 13 settlement agreement between Lloyd and Hoffman. The trial transcript from February 28, 2006,
 14 reflects that no exhibits were placed in evidence (Transcript at page 3), and a careful reading of the
 15 transcripts reflects that no one ever formally offered any exhibits into evidence, although both sides
 16 freely referred to them. Presumably, when the Court asked whether the “exhibits are all-agreed
 17 upon?” and Mr. Goodrich answered “yes”, at the beginning of trial (Transcript at page 4), the court
 18 treated this as a stipulation that all exhibits go directly into evidence. Notwithstanding the vagueness
 19 of the record, it is clear that the issue of whether Hoffman gave Lloyd written notice of the right to
 20 cancel the contract (the “Cancellation Notice Issue”) was not placed before the court or decided by
 21 the court in the Phase I trial.

22 Similarly, the record on summary judgment is confusing on the whether the Cancellation
 23 Notice Issue was decided by the court. The issue was not discussed in the motion for summary
 24 judgment, and raised only inferentially in the supporting declaration of Mr. Lloyd.

25 After the first hearing on the summary judgment motion, the court entered an order denying
 26 the motion on February 21, 2006. The court’s ruling is silent on the Cancellation Notice Issue.

27 On March 24, 2006, Lloyd re-noticed his motion for summary judgment, which had already
 28 been denied, for another hearing on April 28, 2006. Lloyd did not file any other new papers to

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1 support the motion. In response, Hoffman filed new papers, including a declaration of Jeffrey
 2 Hoffman. In that declaration, Hoffman attached a copy of the cancellation notice signed by Mr.
 3 Lloyd and dated March 28, 2003. Lloyd did not file a reply brief.

4 The motion for summary judgment was heard on April 28, 2006. At the hearing Mr.
 5 Goodrich argued that Lloyd's signature on the cancellation notice was not properly authenticated
 6 (page 80), that "Mr. Lloyd thinks this is a forgery" (page 13) and states that "we objected to its
 7 admissibility, and Mr. Pahl withdrew it." (page 14). However, no such withdrawal is found in the
 8 transcript of the April 28 hearing, and the April 28 hearing was the first and only hearing on the
 9 summary judgment motion after Mr. Hoffman's declaration with the cancellation notice was filed.
 10 The court observed that "you don't have anybody that said, 'I sent these papers to him on May 28th.
 11 This is what I got back and it had a signature on it.'" (page 25) The court also observed that it was
 12 "undisputed that he did not sign this paper on May 28th. . ." (page 27.) This observation is not
 13 supported by the record. Hoffman never conceded the point, and the issue was disputed based on the
 14 declarations. Only if one draws inferences from the Lloyd declaration in a light most favorable to
 15 Lloyd, could such a conclusion be drawn.

16 On May 15, 2006, the court entered its Order Granting Defendant Thomas Lloyd's Motion
 17 For Summary Judgment" as "modified at the time of hearing", dismissing Hoffman's Slander of
 18 Title and Cancellation of Cloud of Title claims, and quieting title to the subject property in Lloyd,
 19 "subject to the monetary claims, if any, of Hoffman and the other cross-defendants."

20 On January 24, 2007, the Court issued a second Tentative Ruling Re Terms For Cancellation
 21 Of Deed in which it recited that it had "previously determined that Lloyd was not provided the notice
 22 of right to cancel the contract" prior to the time he "cancelled that contract."

23 While courts have the power to grant summary judgment *sua sponte*, it is "proper only when
 24 1) no material dispute of fact exists, and 2) the losing party has had an adequate opportunity to
 25 address the issues involved, including adequate time to develop any facts necessary to oppose
 26 summary judgment." *Fuller v. City of Oakland, Calif.*, 47 F.3d 1522, 1533 (9th Cir. 1995) (citations
 27 omitted). Accordingly, in *Fuller*, the Ninth Circuit held that the district court erred in granting
 28 summary judgment *sua sponte* against the plaintiff on her sexual discrimination claim in connection

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1 with the conduct of a police internal affairs investigation upon completion of a bench trial on her
 2 Title VII sexual harassment claim. *Id.* at 1535. Viewing the record in the light most favorable to the
 3 plaintiff, the Court found it conceivable that a jury could reasonably infer that the underlying internal
 4 affairs investigation was performed in a sexually-biased manner. *Id.* at 1535. Moreover, the Court
 5 found that the record was not fully developed on the issue because the district court had made clear
 6 that the issue being tried was sexual harassment, and not the conduct of the internal affairs
 7 investigation, and consequently, questioning of one of the chief witnesses at trial focused on issues
 8 unrelated to the investigation. *Id.*

9 Here, the issues that were being presented on the summary judgment motion appeared to be a
 10 moving target. Lloyd's original notice of motion for summary judgment, dated January 20, 2006,
 11 although generally stating that it sought summary judgment on all claims, did not give notice that
 12 Lloyd alternatively sought specification of any factual issues. The recitation of facts, although going
 13 into detail about the events surrounding the settlement agreement, does not articulate Lloyd's
 14 argument that he did not sign the Notice of Cancellation on May 28.

15 The legal discussion in Lloyd's memorandum ignored the existence of the Notice of
 16 Cancellation and pretended that none existed. Then, in his reply brief, Mr. Goodrich refers to the
 17 document as a "crude forgery" based on nothing more than the fact that Mr. Pahl "miraculously"
 18 produced the document in response to the motion for summary judgment and because the signature
 19 appears underneath the printed line. Mr. Goodrich jumps to the conclusion that it must be a "cut and
 20 paste" forgery because the signature appears below the line (ignoring the fact that a forger, spending
 21 more time to make a document look correct, would be less likely to put the signature out of place).
 22 Lloyd argued generically in the brief that the document is "inadmissible under Rule 901", ignoring
 23 that Rule 901 allows the trier of fact to compare the challenged signature with authenticated
 24 specimens.

25 Yet it now appears that there was nothing at all miraculous about the existence of the signed
 26 acknowledgement of Notice of Cancellation. Lloyd's own real estate agent knew about its existence.
 27 Under the rules of discovery, Lloyd was obligated to turn over all his records, including the records in
 28 his agent's possession. Lloyd did not turn over his real estate agent's files. Instead, counsel for

1 Lloyd simply resorted to sophistry. Giving Mr. Goodrich the benefit of the doubt, one can only
 2 assume that he never even made inquiry of Mr. Robertson (or how could he have made the
 3 representations he did in court?) to find out what his client had been given or when he signed the
 4 transactional documents.

5 To make matters worse, it appears that Lloyd was skirting procedure to obtain an element of
 6 surprise. Before the Phase II trial date, he had filed a new adversary proceeding against Hoffman,
 7 charging (in a 30-page complaint) a laundry list of alleged fraudulent conduct without asserting
 8 specific facts necessary to such a complaint. The clerk's record reflects that Lloyd failed to have
 9 process issued in this proceeding. Had process been served, Hoffman would have requested a
 10 continuance to conduct discovery on the panoply of new theories being raised on the common set of
 11 facts.

12 IV. ARGUMENT

13 The Court should not confirm its proposed findings. The hearing on this matter should be
 14 treated as a status conference in the adversary proceeding to determine what Mr. Lloyd intends to do
 15 with all his new, unserved adversary proceedings, and to obtain a coordination of issues and
 16 discovery in all these cases.

17 DATED: February 13, 2007

18 GOLDBERG, STINNETT, MEYERS & DAVIS
 19 A Professional Corporation

20 By 
 21 /s/ Dennis D. Davis
 22 Attorneys for Plaintiff Jeffrey E. Hoffman
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Page 1 of 2

Miscellaneous:05-03328 Hoffman v. Lloyd et al

Type: ap

Chapter: v

Office: 3 (San Francisco)

Lead Case: 04-32921

Judge: TEC

Case Flag: PreAct, APPEAL

U.S. Bankruptcy Court**Northern District of California****Notice of Electronic Filing**

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Case Name: Hoffman v. Lloyd et al**Case Number:** 05-03328**Document Number:** 108**Docket Text:**

Brief/Memorandum in support of (RE: related document(s)[104] Opposition Brief/Memorandum,).
Filed by Plaintiff Jeffrey E. Hoffman (Attachments: # (1) Declaration of Asher Robertson# (2) Exhibit s "A" through "D" to Declaration of Asher Robertson# (3) Certificate of Service) (Davis, Dennis)

The following document(s) are associated with this transaction:

Document description:Main Document**Original filename:**C:\Documents and Settings\pjoakimson\Desktop\Lloyd Brief.pdf**Electronic document Stamp:**

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a467d907ba2fa8c67197c4450b7ab6be73fe4559e3df92e3f681c2eb513cb]]

Document description:Declaration of Asher Robertson**Original filename:**C:\Documents and Settings\pjoakimson\Desktop\Dec Asher Robertson.pdf**Electronic document Stamp:**

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DOCUMENT 19

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23 **UNITED STATES BANKRUPTCY COURT**
 24 **NORTHERN DISTRICT OF CALIFORNIA**
 25 **SAN FRANCISCO DIVISION**

26 In re:) Case No. 04-32921 TEC
 27 THOMAS LLOYD,) Adversary No. 05-03328
 28 Debtor.) Chapter 11

29 JEFFREY E. HOFFMAN,)
 30 Plaintiff,) **DECLARATION OF JEFFREY E.**
 31 v.) **HOFFMAN IN SUPPORT OF**
 32 THOMAS R. LLOYD, et al.,) **PLAINTIFF'S OPPOSITION TO**
 33) **DEFENDANT LLOYD'S MOTION**
 34) **FOR SUMMARY JUDGMENT**

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1 and observation, except as to those matters which are stated to be based upon
2 information and belief. If called to testify herein, I can and would competently testify
3 thereto.

4 2. I am the President of Defendant J. EDWARDS CO. INVESTMENT
5 GROUP, INC. ("J. EDWARDS"). J. EDWARDS, in turn, is a managing member of
6 Defendants H&B PROPERTIES ("H&B"). In my capacity as President of J.
7 EDWARDS, I am personally familiar with the transaction involved in this matter and
8 have personal knowledge of all documents related thereto.

9 3. In May 2003, LLOYD requested that I purchase LLOYD's real property
10 located at 940 Elizabeth Street, San Francisco, California ("Subject Property"). In
11 accordance with LLOYD's request, I purchased the Subject Property from LLOYD
12 utilizing a PRDS ("Peninsula Regional Data Service) Real Estate Contract dated May 28,
13 2003 ("Purchase Contract") for \$900,000. A true and correct copy of the Purchase
14 Contract is attached hereto and incorporated herein as Exhibit A.

15 4. The Purchase Contract between the parties included an Option Agreement.
16 A true and correct copy of the Option Agreement is attached hereto and incorporated
17 herein as Exhibit B. *Contract*

18 5. The Purchase included a Notice of Cancellation. A true and correct copy
19 of the Notice of Cancellation is attached hereto and incorporated herein as Exhibit C.
20 The Notice of Cancellation was a part of the records submitted to purchasers with whom
21 I do business deals, and thereafter maintain regularly as business records in the course of
22 my real estate transactions.

23 6. The Purchase Contract included a Residential Lease After Sale ("Lease").
24 A true and correct copy of the Lease is attached hereto and incorporated herein as Exhibit
25 D. Pursuant to this written Lease, I leased to LLOYD the property identified in the
26 Purchase Contract. Pursuant to the terms of the Lease, LLOYD was required to pay
27 me the sum of \$3,595.64 per month as rent. LLOYD failed to pay to me any installment
28 of rent due under the Lease.

1 8. On or about August 25, 2003, following the close of escrow, a Grant Deed
2 transferring the Subject Property from LLOYD to me was recorded with the County of
3 San Francisco.

4 9. Following the transfer of the Subject Property from LLOYD to me, I
5 conveyed the Subject Property to my single member limited liability company, H&B
6 PROPERTIES, LLC ("H & B"), by Grant Deed recorded on August 5, 2004. H&B
7 has subsequently reconveyed the Subject Property to me via Grant Deed dated
8 November 24, 2004, and recorded on January 4, 2005.

9 10. LLOYD failed to pay any installment of rent due under the Lease during
10 the entire tenure of his occupancy. On June 2, 2004, H&B, as assignee for HOFFMAN,
11 filed a Complaint for Unlawful Detainer against LLOYD in the Superior Court of
12 California, County of San Francisco (the "Unlawful Detainer Action"). A true and
13 correct copy of the Complaint for Unlawful Detainer that I authorized to be filed is
14 attached herein and incorporated herein as Exhibit E. In connection with the Unlawful
15 Detainer Action, LLOYD was represented by LLOYD BLUM ("BLUM").

16 11. Following LLOYD's filing of an Answer in the Unlawful Detainer Action,
17 and prior to trial, settlement discussions commenced between the parties. On August 3,
18 2004, LLOYD and I executed a Settlement Agreement, which waived all claims against
19 HOFFMAN by executing a general release pursuant to California Civil Code Section
20 §1542. A true and correct copy of the Settlement Agreement is attached hereto and
21 incorporated herein as Exhibit F. LLOYD did not expressly preserve any claims, under
22 Civil Code §1695 or otherwise under the terms of the Settlement Agreement.

23 I declare under penalty of perjury under the laws of the State of California that the
24 foregoing is true and correct and that this Declaration was executed on April __2006, at
25 Fresno, California.

26
27 
28 Jeffrey E. Hoffman

Pahl & Gosselin
A Professional Corp.
225 W. Santa Clara St.
Suite 1500
San Jose, CA 95113
(408) 286-5100

**PRDS® REAL ESTATE PURCHASE CONTRACT**

(THIS IS INTENDED TO BE A LEGALLY BINDING CONTRACT, READ IT CAREFULLY.)

The undersigned, JE Hoffman ("Buyer") hereby offers to purchase, for the sum of \$ 900,000.00, the real property located at 940 Elizabeth St, City of San Francisco, County of San Francisco, California, ("Property") on the terms contained in this Real Estate Purchase Contract ("Contract"), dated 05/28/2003 (for reference purposes only):

1. FINANCING TERMS:

A. \$ 0.00 DEPOSIT, by personal check, shall be held unencashed until manual execution ("Acceptance") of this Contract, then deposited in Escrow Holder's account (see Para. 15.A.) [or ☐ Broker's Trust account] on or before _____.

B. \$ 0.00 ADDITIONAL DEPOSIT, by personal check, shall be deposited in Escrow Holder's account (see Para. 15.A.) [or ☐ Broker's Trust account] on or before _____. If Liquidated Damages (Para. 5) is initiated, Seller and Buyer shall sign a Receipt for Increased Deposit (RID-11) upon deposit increase.

C. \$ 250,000.00 BALANCE OF DOWN PAYMENT shall be deposited in Escrow in time to close escrow. Buyer's ability to obtain the down payment is *not* a contingency of this Contract.

D. \$ 650,000.00 LOAN: This Contract ☒ is ☐ is *not* contingent upon Buyer's obtaining a loan secured by a First Deed of Trust payable to Lender at approximately \$ 3,595.00 per month to include: ☒ principal and interest ☐ interest only at not more than 5 1/8 % ☒ fixed ☐ adjustable per annum for no fewer than 30 years with a lifetime maximum rate of N/A % and an origination fee not to exceed 2 % of this loan. If this Contract is contingent upon Buyer's obtaining a loan, Buyer shall, within 5 or ☐ _____ days of Acceptance, provide Lender's written confirmation that Buyer has submitted a completed loan application, or this Contract may be cancelled at Seller's option.

E. \$ 0.00 SELLER OR ADDITIONAL FINANCING: See attached PRDS® Seller and Other Financing Addendum.

F. \$ 900,000.00 TOTAL PURCHASE PRICE ("Purchase Price"), not including closing costs.

2. **SOURCE OF FUNDS:** Buyer represents that the funds required for the initial deposit, additional deposit, cash balance, and closing costs are readily available. Obtaining these funds is not a contingency of this Contract.
3. **INTENT TO OCCUPY:** Buyer ☒ *does* ☐ *does not* intend to occupy the Property as Buyer's residence.
4. **FIXTURES AND PERSONAL PROPERTY:** ALL EXISTING fixtures and fittings that are attached to the Property are (if owned by Seller and unless excluded below) INCLUDED IN THE PURCHASE PRICE and shall be transferred free of liens. These shall be deemed to include, but are not limited to, the following: existing electrical, lighting, plumbing and heating fixtures, fireplace inserts and attached fireplace equipment, solar systems, built-in appliances, screens, awnings, shutters, window coverings, attached floor coverings, television antennas, satellite dishes and related equipment, private integrated telephone systems, air coolers/conditioners, pool/spa equipment, water softeners, security systems/alarms, keys to all exterior locks, garage door openers/remote controls, mailbox, and in-ground landscaping.

A. ITEMS EXCLUDED:

B. ITEMS INCLUDED: The following items of personal property, free of liens and without warranty of condition (unless so provided in Para.12):

5. **LIQUIDATED DAMAGES:** By placing their initials here, Buyer (_____/_____) and Seller (_____/_____) agree that, in the event failure to complete this purchase is due to Buyer's breach of the Contract and not by reason of a default by Seller, (a) Seller is released from the obligation to sell to Buyer, (b) Seller shall retain Buyer's deposit paid as Seller's only recourse, and (c) if the Property contains one to four units, one of which Buyer intends to occupy, then any deposit retained by Seller shall not exceed 3% of the Purchase Price, with any excess promptly returned to Buyer.
6. **MEDIATION OF DISPUTES:** Buyer and Seller (collectively "Parties") agree to mediate any dispute between them arising out of this transaction prior to any court action or arbitration. Mediation is a non-binding process in which Parties to a dispute meet with a neutral mediator (selected by the Parties) who will try to work out a mutually acceptable resolution. The mediator does not impose a settlement on the Parties. If the Parties cannot agree on a mediator, the Superior Court shall appoint a mediator. The mediator may conduct more than one session and mediation fees shall be paid equally by participating Parties. Matters excluded from arbitration (Para. 7) are also excluded from mediation. A buyer or seller who refuses or resists mediation shall not be entitled to recover prevailing party attorneys' fees (Para. 17.C.).
7. **ARBITRATION OF DISPUTES:**

A. **Explanation:** Arbitration is a private dispute resolution process in which Parties (by themselves or through their attorneys) submit disputes to a neutral arbitrator who is charged with rendering a fair and final decision. When arbitration is selected, the Parties give up their rights to trial by judge or jury and to full discovery rights (e.g., depositions, document production) are provided for under California law. Rulings are typically on an hourly basis. The decision of the arbitrator is rigid than in trial court. Arbitration can award compensatory damages, punitive damages, injunctive relief, and attorney's fees.

Buyer's Initials () ()

Seller's Initials LY

Plaintiff's EOR-418

Subject Property Address: 940 Elizabeth St San Francisco CA 94114Date: 05/28/2003

relief and declaratory relief. No trial or other court process is available to re-try the case or to appeal the merits of the arbitrator's ruling. This means that even when a party claims the arbitrator made a clearly wrong decision, based on a misunderstanding of fact or of law or an unwillingness to follow the law, that decision nevertheless remains final and unappealable. Only in cases of actual fraud in the arbitration process, corruption, bias, lack of due process or jurisdiction, or arbitrator's computation error, can an award be vacated or modified. The Parties are advised to confer with legal counsel for advice before committing to binding arbitration.

- B. Arbitration Process, Election to Arbitrate: Any dispute arising out of this transaction shall be decided by neutral binding arbitration (in accordance with Chapter 3, Title 9 of the California Code of Civil Procedure (CCP §1283.05) including, but not limited to, the right of discovery), and not by court action, except as provided by California law for judicial review of arbitration proceedings. The arbitrator shall be a retired Superior Court judge or a licensed California attorney with at least 5 years real estate experience. If the Parties cannot agree on an arbitrator, the Superior Court shall appoint the arbitrator. The filing of an action in a court of competent jurisdiction to enable the recording of a notice of pending action, for order of attachment, receivership, injunction, or other provisional remedies shall not constitute a waiver of the right to mediation or arbitration under this Contract, regardless of whether the said complaint includes causes of action not necessary to the recordation of the notice of pending action. The Parties agree that, in the event of such court filing, it would be appropriate for the court to issue an order staying proceedings therein, pending the completion of mediation or arbitration under this Contract. The filing of such judicial action shall not constitute a waiver of mediation or arbitration rights or the prevailing party's right to receive attorney's fees and costs. The losing party shall pay the arbitrator's fees. Exclusions from arbitration: unlawful detainer, foreclosure-related actions, matters within Small Claims Court jurisdiction and matters to which CCP §§337.1 or 337.15 apply. By electing arbitration, Buyer and Seller also agree to submit to mediation and binding arbitration such claims as they intend to make against the brokers or agents related to or arising out of this transaction, so long as, within 10 days after receipt of such claims, the brokers and agents responding thereto shall have committed to participation in such mediation and arbitration. An election by brokers or agents to mediate or arbitrate as provided herein shall not be deemed to make them Parties to this Contract.

"NOTICE: BY INITIALING IN THE SPACE BELOW, YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW, YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS SUCH RIGHTS ARE SPECIFICALLY INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY."

"WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THIS 'ARBITRATION OF DISPUTES' PROVISION TO NEUTRAL ARBITRATION."

Buyer's Initials () ()

Seller's Initials () ()

8. REAL ESTATE TRANSFER DISCLOSURE STATEMENT ("TDS"), LEAD BASED-PAINT HAZARD DISCLOSURE ("Lead Disclosure"), PRDS® SUPPLEMENTAL SELLER CHECKLIST DISCLOSURE ("SSC"); NATURAL HAZARD DISCLOSURE STATEMENT ("NHDS"): Unless the transaction is exempt by law, Seller, Listing Agent (if any) and Selling Agent (if any, and if such signature is required by law) shall duly complete a TDS, a Lead Disclosure and an NHDS, and Seller shall duly complete an SSC. Buyer has, prior to Acceptance, received, read and acknowledged in writing Buyer's receipt of the following: ☒ TDS, ☒ Lead Disclosure, ☒ SSC and ☒ NHDS; and/or Seller shall, within 5 or ☐ days of Acceptance, deliver to Buyer the following: ☐ TDS, ☐ Lead Disclosure, ☐ SSC and ☐ NHDS. If the TDS, Lead Disclosure and/or NHDS are delivered to Buyer after Acceptance, Buyer shall have the right to terminate the Contract by giving written notice to Seller within 3 days after such delivery (if delivery has been made in person) or 5 days after such delivery (if delivery has been made by mail). Lead Disclosures sent by mail must be sent certified mail or registered mail, with return receipt requested. Unless Buyer elects to terminate the Contract based thereon, Buyer shall sign and return the TDS, Lead Disclosure, NHDS and SSC to Seller within 5 or ☐ days after delivery thereof to Buyer. If Buyer fails to sign and return the foregoing disclosure documents within the times required, Seller shall have the right to terminate the Contract. ALTERATIONS: Seller is obligated to disclose any property additions or alterations made by or known to Seller and whether permits and final approvals have been obtained. Where Buyer has been given timely and sufficient notice that improvements on the Property have been made without necessary permits or approvals, Buyer shall assume all risk, liability and expense for bringing such improvements into legal compliance.
9. PROPERTY DISCLOSURES: Seller shall pay for and provide to Buyer the following: Earthquake Safety and Environmental Hazard (including lead) booklet, Natural Hazards Disclosure report, Mello-Roos disclosure, environmental disclosure report (limited to filed governmental reports), smoke detector and water heater compliance statements, FIRPTA and California non-resident withholding disclosures, and
10. PROPERTY CONDITION, LEAD DISCLOSURE, INSURANCE CONTINGENCIES: Unless said contingencies are otherwise waived, this Contract is contingent upon Buyer's approval of the condition of the Property and of other factors, including, but not limited to, Lead Inspection (if legally required), that may affect its value and desirability, and on Buyer's ability to obtain property insurance. (Even where not legally required, Buyer shall have the right to make this Contract contingent on Lead Inspection by so designating in Para. 16.B.) If Buyer finds any conditions that are unacceptable to Buyer, then Buyer shall be entitled to cancel this Contract. Buyer has a duty to inspect the Property thoroughly for its present or planned use and shall have the right to hire, at Buyer's expense, qualified professionals to conduct such inspections. Buyer's failure to exercise this right of inspection is against the advice of the real estate licensees and Buyer acknowledges that the consequences of such failure are at Buyer's own peril. Seller shall make the Property reasonably available for such inspections. No inspections may be made by any building department inspector or government employee without the prior written consent of Seller. Upon receipt, Buyer shall furnish to Seller, at no cost, copies of all reports. Buyer shall repair all damage to the Property arising out of Buyer's inspections and shall keep the Property free of liens and indemnify Seller from and against any liability, claim or damage arising out of the inspections.

Buyer's Initials () ()

Seller's Initials () ()

Subject Property Address: 940 Elizabeth St San Francisco CA 94114

Date: 05/28/2003

STRUCTURAL PEST CONTROL ("SPC") CERTIFICATION:

- A. ☐ Buyer ☐ Seller shall, within 10 or ☐ _____ days of Acceptance, provide, at ☐ Buyer's ☐ Seller's expense, a current inspection report ("Report") by a licensed SPC operator of the main building and ☐ decks (attached or otherwise), ☐ detached garage(s)/carport(s) and ☐ the following other structures on the Property: _____
- B. Seller shall pay for Section 1 work as described in the Report and shall, prior to Close of Escrow (defined in Para. 19.A.), provide a certification from a licensed SPC operator that the Property is free from active infestation or infection as described in the Report, which certification complies with the SPC Board requirements. Seller shall not be responsible for any Section 1 items that are the responsibility of the Homeowner's Association pursuant to Covenants, Conditions & Restrictions ("CC&Rs") and/or rules and regulations (see Common Interest Development documentation) or (2) Section 2 items, which may be otherwise required elsewhere in this Contract.
- C. If inspection of inaccessible areas is recommended in the Report, Buyer shall have the right to such inspections if requested within 5 or ☐ _____ days from receipt of the Report. Buyer's failure to request such additional inspections shall constitute a waiver of this right. If additional inspections reveal no further Section 1 findings, the supplemental report and entry and closure costs shall be paid by Buyer.
- D. If Seller's personal property renders any areas inaccessible, then Seller shall make such areas accessible and shall pay for any recommended supplemental repairs and for additional Section 1 repairs, if any.
- E. If fumigation is required, Seller shall comply with fumigation guidelines, including those relating to landscape preservation. Buyer acknowledges that there may be damage caused to landscaping due to tenting of the house and Buyer agrees to take Property subject to any such damage. Upon completion of fumigation, Seller shall ensure that all utilities and services (e.g., electric, gas and water) on the Property are fully restored and rendered operational.

12. **SELLER'S REPAIR/MAINTENANCE OBLIGATIONS:** Seller's repair obligations pursuant to this Para. 12 are limited to deficiencies known or discovered before Close of Escrow. Unless otherwise agreed, Seller shall not be required to repair or replace items not covered by this Paragraph. TDS and other disclosures do not eliminate Seller's repair obligations unless otherwise agreed in writing. Seller shall deliver the Property at Close of Escrow as follows: A: (1) Roof/skylights (not including eaves) shall be in good condition; (2) Built-in appliances, plumbing, heating, air conditioning, electrical, solar, security/alarms, fire sprinkler systems, and pool/spa systems, if any, shall be operative ("operative" shall not necessarily mean in compliance with building codes); (3) Plumbing systems, shower pans, and shower enclosures shall be free of leaks; (4) Structural defects in chimneys and fireplaces, including dampers, shall be repaired by Seller; (5) All broken or cracked glass (not including seal-failure of thermopane windows) shall be replaced. B: (1) The remainder of the Property shall be maintained in the same general condition as of Acceptance; (2) Debris and personal property not included in the sale shall be removed by Seller prior to Close of Escrow. C: **RISK OF LOSS:** If the land or improvements are materially damaged prior to Close of Escrow, Buyer shall have the right to terminate this Contract, recover the full deposit and obtain from Seller reimbursement for inspection and financing fees incurred. If Buyer elects to complete the purchase, Buyer shall be entitled to an assignment from Seller of all insurance proceeds covering the loss.

13. **REPAIRS/WALK-THROUGH INSPECTION:** All repairs shall be made prior to Close of Escrow by a licensed contractor, using materials of comparable quality, done in a workmanlike manner and in compliance with all applicable building codes and permit requirements. Buyer shall be entitled to a "walk-through" inspection of the Property prior to Close of Escrow, not as a contingency of sale, but solely to confirm that all repairs have been completed and that the Property, including landscaping, is in the same general condition as of the date of Acceptance.

14. **HOME PROTECTION PLAN:** A home protection plan shall be ordered by ☒ Buyer ☐ Seller or ☐ is waived. Such plan shall be at a cost not to exceed \$ 525.00 and shall be paid for by ☐ Buyer ☒ Seller ☐ Buyer (50%) / Seller (50%). Options shall be selected by persons ordering the plan, or ☐ options shall include: _____

15. CONDITIONS RELATING TO TITLE:

- A. **TITLE:** ☐ Buyer ☒ Seller shall pay escrow fees and the cost of an ALTA homeowners or CLTA homeowners policy of title insurance issued by or through New Century Title ("Escrow Holder"). If a lender's policy is required, Buyer shall pay its cost. Title shall be clear and marketable, subject only to assumed liens, CC&Rs and easements of record, and current taxes. This Contract is contingent upon Buyer's approval of a current preliminary report and CC&Rs (if any). (A preliminary report is only an offer of title insurance coverage and may not identify every exception affecting title.)
- B. **PUBLIC IMPROVEMENT BONDS & ASSESSMENTS:** Such bonds and assessments of special assessment districts (including Mello-Roos bonds) that are now a lien shall be paid current by Seller at Close of Escrow. Payments not yet due shall be assumed by Buyer.
- C. **PROPERTY TAXES:** The Property will be reassessed upon change of ownership. Upon Buyer's request, Seller shall provide a current tax bill. Supplemental taxes shall be paid as follows: (1) for periods after Close of Escrow, by Buyer, and (2) for periods prior to Close of Escrow, by Seller.

16. CONTINGENCY REMOVAL: FAILURE TO REMOVE ALL CONTINGENCIES IN WRITING WITHIN THE TIME PERIODS SPECIFIED BELOW SHALL MAKE THIS CONTRACT SUBJECT TO CANCELLATION, AT SELLER'S OPTION. IF THE TIME PERIOD SPECIFIED IS "0" DAYS, THEN THE CONTINGENCY IS DEEMED WAIVED.

- A. **FINANCING CONTINGENCY:** If financing is a contingency (Paragraphs 1.D. and/or 1.E.), such contingency shall be removed on or before N/A days from Acceptance. Buyer agrees to verify all loan terms directly with Lender prior to removing contingency.
- B. **LEAD INSPECTION CONTINGENCY:** If a Lead Disclosure is legally required, Buyer's Lead Inspection contingency shall be removed within 10 or ☐ _____ days of Acceptance. If a required Lead Disclosure is not delivered to Buyer until after Acceptance, the time within which Buyer may exercise termination rights shall not be less than 3 days from personal delivery thereof (5 days for delivery by mail).
- C. The following contingencies shall be removed on or before 0 days from Acceptance, unless extended by Para. 16.E.
- | | |
|--|----------|
| 1) Property Disclosures (Para. 9) | 4) _____ |
| 2) Property Condition & Insurance (Para. 10) | 5) _____ |
| 3) Title Documents (Para. 15.A.) | 6) _____ |

Buyer's Initials _____

Seller's Initials _____

Subject Property Address: 940 Elizabeth St San Francisco CA 94114

Date: 05/28/2003

- D. Documents to be provided by Seller necessary to remove Buyer's contingencies in Paragraphs 16.A., 16.B., and/or 16.C. shall be delivered to Buyer within 5 or ☐ _____ days of Acceptance.
- E. If Buyer requests that Seller make repairs or corrections not otherwise required by this Contract, then Buyer shall, within the respective time frames in Para. 16.C., deliver to Seller written notice of such items and Seller shall have 5 or ☐ _____ days from receipt of such notice within which to respond in writing. If Seller agrees in writing to Buyer's requests, Buyer shall thereupon remove the Property Condition contingency. If Seller's response indicates that Seller is unwilling or unable to repair or correct such items, or if Seller does not respond within the time frame in this Para. 16, Buyer shall have 3 or ☐ _____ days (after receipt of Seller's response, or after the expiration of the time for Seller to respond, whichever occurs first) to remove these contingencies or cancel this Contract. If Buyer does not give such written notice of cancellation or fails to remove the contingency within the time frame in this Para. 16, Seller shall have the right to cancel this Contract by giving written notice of such cancellation to Buyer.
- F. If Buyer properly exercises a right of cancellation under this Contract, Buyer shall be entitled to a refund of Buyer's deposit, less any non-reimbursable fees and costs, and the Parties agree to sign mutual escrow instructions to this effect.

17. LEGAL NATURE OF AGREEMENT:

- A. **ENTIRE AGREEMENT:** This Contract is intended by the Parties to be the full and final expression of their agreement. It shall not be contradicted by evidence of any prior agreement or contemporaneous oral agreement. The captions in this Contract are for reference only. This Contract may not be amended, modified, altered or changed in any respect whatsoever except by a further agreement in writing executed by Buyer and Seller. Unless otherwise agreed or required by Escrow Holder, all documents transmitted by facsimile shall be regarded as valid substitutes for original documents. Buyer and Seller understand that real estate licensees are not Parties to this Contract and are not responsible or liable for any inability or failure by Buyer or Seller to perform fully the terms hereof.
- B. **BINDING AGREEMENT; ASSIGNMENT:** This Contract is binding upon the heirs, executors, administrators, successors and assigns of Buyer and Seller and shall survive Close of Escrow. Buyer may not assign any rights hereunder without the prior written consent of Seller. Seller assigns to Buyer all of Seller's rights of action against providers of materials or services relating to the Property.
- C. **ATTORNEYS' FEES:** In event of any legal action, arbitration, or other proceeding between Buyer and Seller arising out of this Contract, the prevailing Buyer or Seller shall be awarded reasonable attorneys' fees and court or arbitration costs in addition to any other judgment or award.
- D. **DISSEMINATION OF INFORMATION:** Both Parties authorize brokers to disseminate information concerning sales price, terms, and financing of this transaction after recordation.
- E. **LEGAL, TAX AND OTHER ADVICE:** Buyer and Seller understand that real estate licensees are providing real estate advice only in this transaction. If the Parties desire legal, tax or other advice, they must consult an attorney, accountant, or other appropriate professional.
- F. **GOVERNING LAW:** This Agreement and all other instruments referred to herein shall be governed by, and shall be construed according to, the laws of the state of California. For the purpose of all disputes arising out of or under this Agreement, the Parties agree that the venue for any judicial or arbitration proceedings shall rest in the county in which the Property is located.

18. DEFAULT AND REMEDIES:

- A. **BUYER'S DEFAULT:** Should escrow not close due to a default by Buyer, Seller's entitlement to damages shall be limited pursuant to Para. 5 (if such provision has been initialed by both Parties). If such provision is not initialed by both Parties, Buyer may be liable to Seller for additional damages including, but not limited to, consequential damages (e.g., PITI, etc.). In either case, the defaulting Buyer may be liable for payment of the brokerage fee.
- B. **SELLER'S DEFAULT:** Should escrow not close due to a default by Seller, or if Seller does not otherwise perform under this Contract, Seller may be liable for Buyer's damages including, but not limited to, consequential damages (e.g., temporary housing arrangements, storage costs, etc.) and for payment of the brokerage fee.
- C. **OTHER NON-PERFORMANCE:** If either Buyer or Seller fails to perform pursuant to this Contract, the defaulting party may be liable for the other party's damages (e.g., consequential damages, including but not limited to, "PITI", etc.).

19. ESCROW CONDITIONS AND INSTRUCTIONS:

- A. **CLOSE OF ESCROW:** Recordation of the transfer of title ("Close of Escrow") and delivery of keys shall occur on 06/30/2003 (Date). Possession shall be no later than 5 PM or ☒ 12: AM/PM on the same date or ☐ _____ (possession date), subject to provisions of an executed residential lease after sale agreement (or equivalent). If Seller retains possession after Close of Escrow, a minimum of one set of keys shall be given to Buyer at Close of Escrow.
- B. **PRORATIONS and TRANSFER TAX:** Property taxes for the fiscal year, interest on any loan assumed by Buyer, Homeowners Association dues, rents, and premiums on insurance assumed by Buyer shall be prorated as of the Close of Escrow. Seller shall pay the cost of county real property transfer tax. ~~XXXXXX~~ Seller shall ~~XXXXXX~~ pay the cost of any city transfer tax and transfer fee.
- C. **ESCROW INSTRUCTIONS:** This Para. 19 and Para. 27, together with any additional escrow instructions, shall constitute joint escrow instructions to Escrow Holder. The Parties shall execute such additional escrow instructions requested by Escrow Holder that are not inconsistent with the provisions of this Contract. In the event of any alleged failure of performance of either Buyer or Seller, nothing in this Paragraph 19 shall impose any duty on Escrow Holder to concern itself with other provisions of this Contract or to make any determination as to the ownership of, or interest in, any funds deposited. Funds placed in the Escrow/Trust account will not be released unless agreed to in writing by both Parties or pursuant to court or arbitrator's order.

Buyer's Initials ()

Seller's Initials ()

Subject Property Address: 940 Elizabeth St San Francisco CA 94114 Date: 05/28/2003

20. **ADDITIONAL CONTRACT DOCUMENTS:** The PRDS[®] Advisory Disclosure (Page 6), along with the following addenda, if checked below and submitted herewith, are made part of this Contract.

- ☐ A. PRDS[®] Seller and Other Financing Addendum
☐ B. PRDS[®] Common Interest Development Addendum
☐ C. Interim Occupancy Agreement (Buyer in possession)
☐ D. Residential Lease After Sale (Seller in possession)
☐ E. Sale of Property Contingency
☒ F. "AS-IS" Addendum
☐ G. Other: _____
☐ H. Other: _____

21. **OTHER TERMS AND CONDITIONS:**

- 1) Seller shall pay all cost/fees associated with this transaction.

~~22. AGENCY DISCLOSURE AND CONFIRMATION: BUYER AND SELLER ACKNOWLEDGE THEIR PRIOR RECEIPT OF AGENCY DISCLOSURE FORMS. AGENCY CONFIRMATION: The following agency relationships are hereby confirmed for this transaction:~~

~~Listing Agent: N/A (Print Company Name) is the agent of (check one): ☐ Seller exclusively, or ☐ both Buyer and Seller~~

~~Selling Agent: Asher Robertson (Print Company Name) (if not the same as the Listing Agent) is the agent of (check one): ☒ Buyer exclusively, or ☐ Seller exclusively, or ☐ both Buyer and Seller~~

23. **TIME: TIME IS OF THE ESSENCE IN THIS CONTRACT.** Extensions, if any, must be agreed to in writing by both Parties.

24. **EQUAL HOUSING OPPORTUNITY:** The Property is sold in compliance with federal, state, and local anti-discrimination laws.

25. **BUYER'S DUTY OF CARE:** Buyer has, and acknowledges, a duty to exercise reasonable care to protect himself or herself, including those facts that are known to or within the diligent attention or observation of a buyer or prospective buyer.

26. **OFFER:** This is an offer to purchase the Property. Unless this offer is accepted by Seller and a signed copy personally received by Buyer or by _____, who is authorized to receive it, by _____ at _____ AM/PM, this offer shall be deemed revoked and the deposit shall be returned. Buyer has read and acknowledges receipt of a copy of this offer. This Contract may be signed in counterparts.

Date: _____ Time: _____ Buyer: JE Hoffman Signature: _____
(Print Name)

Date: _____ Time: _____ Buyer: _____ Signature: _____
(Print Name)

Date: _____ Selling Office: _____ by: _____

Address: _____

TEL: _____ FAX: _____ Email: _____

27. **BROKERAGE FEE:** Seller agrees to pay Listing Agent a brokerage fee pursuant to the listing or commission agreement. Listing Agent hereby assigns to Selling Agent _____ % of the sales price (or the amount of \$ _____) from said brokerage fee and instructs Escrow Holder to disburse said amount to Selling Agent. From the proceeds of the sale herein, Seller irrevocably assigns to Listing Agent the entirety of the brokerage fees provided in this transaction, and irrevocably instructs Escrow Holder to disburse said fees to the respective Agents at the Close of Escrow.

28. **COUNTER OFFER:** When Seller's initials are placed here (_____/_____), Seller's acceptance is made conditional upon Buyer's written acceptance of the attached Counter Offer.

29. **ACCEPTANCE:** Seller accepts the foregoing offer and agrees to sell the Property to Buyer based on and subject to the terms and conditions set forth and referenced herein. Seller acknowledges receipt of a copy hereof and authorizes Broker to deliver a signed copy to Buyer. All paragraphs with spaces provided for initials by Buyer and Seller are incorporated herein only if the spaces are initialed by both Parties. If one party initials and the other party does not, no contract is formed between the Parties unless and until a counter offer resolving the inconsistency is executed by both Parties.

Date: _____ Time: _____ Seller: Thomas R. Lloyd Signature: _____
(Print Name)

Date: _____ Time: _____ Seller: _____ Signature: _____
(Print Name)

Date: _____ Listing Office: _____ by: _____

Address: _____

TEL: _____ FAX: _____ Email: _____

ESCROW RECEIPT: Escrow agent acknowledges receipt of this page as additional escrow instructions.

Date: _____ Escrow Company: _____

By: _____ Title: _____

Advanced Real Estate Solutions, Inc. makes no representations as to the legal validity or adequacy of any provision of this form or any deletions, additions, or modifications thereof, nor of its use in a particular transaction.

Reviewed by Broker _____

Date _____

OFFICE USE ONLY

Subject Property Address: 940 Elizabeth St San Francisco CA 94114Date: 05/28/2003**PRDS® ADVISORY DISCLOSURE**

INVESTIGATION OF PROPERTY CONDITION: The purchase of a home is one of the most important decisions a buyer will make, and demands careful investigation of all aspects of the Property that affect its value and desirability. Correction of some conditions may be required by law and may involve extensive costs. The TDS, SSC, NHDS and Lead Disclosure are not intended to, and do not, substitute for securing inspection reports and other required disclosures. Buyer is encouraged to attend the inspections so as to enable Buyer to discuss property condition issues directly with the inspectors. Buyer is urged to carefully consider ordering such additional reports and investigations as are recommended by inspectors. Consistent with Buyer's legal duty to exercise reasonable care to protect himself or herself regarding facts that are known to or within the diligent attention or observation of a buyer, Buyer is urged to investigate, without limitation, the following:

- A. **CONDITION OF SYSTEMS:** Foundation, roof, plumbing, heating, air conditioning, electrical, mechanical, energy efficiency, security, appliances/personal property, pool/spa, and all other systems and components should be investigated.
- B. **SIZE AND AGE:** Any square footage, room dimensions, age of Property improvements or lot size figures provided have not been and will not be verified, may not be accurate and should not be relied upon.
- C. **PROPERTY LINES AND BOUNDARIES:** Fences, hedges, walls and other natural or constructed barriers or markers do not necessarily identify true Property boundaries. Property lines may be verified only by survey.
- D. **SEWER AND SEPTIC SYSTEM:** Type, size, adequacy, capacity, conditions and components should be inspected for present and future use, and for any eventual expansion of structure. Property may not be connected to sewer and applicable fees may not have been paid. Septic tank may need to be pumped and leach field should be inspected.
- E. **BUILDING PERMITS/NON-PERMITTED CONSTRUCTION:** There are risks in purchasing property on which unpermitted work has been done. These risks include, without limitation: (1) the risk that a city or County may require, at Buyer's expense, the remediation or removal of the unpermitted work, may prohibit its use as "habitable living space," or may deny permits for other, unrelated building projects at the Property; (2) the risk that the Property may be in violation of zoning, use and/or occupancy limit ordinances (e.g., by existence of an illegal "in-law" unit), requiring removal or discontinued use; (3) the risk that a possible hazardous condition could be caused by a non-conforming or unpermitted construction; (4) the risk that a lender's appraisal of the Property and the decision to extend financing could be adversely affected; and (5) the risk that Homeowner's Insurance coverage may not be available or that, even if coverage is obtained, homeowner claims might be denied and/or coverage cancelled. Buyer understands that many homes do not comply with all current building codes (which are subject to periodic amendment). Buyer should analyze the Property's building permit file, the contents of which may indicate whether structural modifications and other items of construction were done with benefit of properly issued building permits, including written final inspection by an appropriate City or County official. Buyer is strongly advised not to give up this right. Since permit documentation and requirements vary among cities and counties, entries made in building files are subject to interpretation. Buyer should rely only on a construction professional and not on the real estate licensees for analysis of the permit file's contents. Buyer understands that some building permit file documentation may be incomplete, illegible, incorrect or missing. Permit history or status is often impossible to establish.
- F. **BUILDING RESTRICTIONS:** Buyer is alerted that all cities, counties and certain other governmental agencies (e.g., FEMA) continually impose limitations and restrictions regarding house size, configuration, design, materials and other matters affecting home construction. If Buyer intends ever to expand or alter the Property, Buyer should consult with the appropriate professionals and governmental agencies.
- G. **RENT AND OCCUPANCY CONTROL:** Governmental agencies may impose restrictions limiting the amount of rent that can be charged, specifying a minimal lease term and/or the maximum number of persons who can occupy the Property.
- H. **WATER AND WELL SYSTEMS:** Buyer should check water source regarding the quantity and quality of water. Well systems and components should be inspected. The Property is subject to water rationing at times of drought.
- I. **TOXIC HAZARDS:** The Property should be inspected for such toxic hazards as asbestos, formaldehyde, radon, methane, other gases, lead-based paint, fuel tanks, contaminated soil or water, hazardous waste, waste disposal sites, electromagnetic fields and other substances, materials, products or conditions. Remediation costs may be extensive.
- J. **SOILS:** Soils native to the greater Bay Area are historically expensive in nature and inconsistent and unreliable in behavior and performance. Property may be subject to earth movement, drainage, and structural/foundation problems not visible upon inspection by Buyer or real estate licensees. Moreover, a general physical inspection of Property will not suffice as a current soils report (old soils reports may not account for current soils conditions).
- K. **NEIGHBORHOOD CONDITIONS:** Buyer should investigate the neighborhood or area conditions including, but not limited to, schools, proximity and adequacy of law enforcement, fire protection and other governmental services, proximity to major entertainment venues (e.g., Shoreline Amphitheater), commercial, industrial, or agricultural activities; criminal activity; transportation issues; construction and development that may affect view or increase traffic; noise or odor from any source; wild and domestic animals; and conditions and influences significant to certain cultures/religions.
- L. **IMPACTED PUBLIC SCHOOLS:** Due to burgeoning enrollments in Bay Area public schools, many local districts are unable to guarantee that incoming students will be admitted to the schools closest to their family homes. Buyer is advised to consult directly with local school districts for information regarding available classroom space.
- M. **NOISE:** The Bay Area is served by three international airports, several municipal airports and Moffett Field. Virtually all residential areas are overflown by jet and propeller aircraft at noise and frequency levels that vary depending on aircraft size, route and altitude, on weather and on the Property's proximity to flight paths and airports. Similarly, noise produced by train, bus, light rail, freeways and other causes can be an annoyance or intrusion, depending on the individual. Buyer should inquire of transportation agencies and visit the Property and vicinity at various times to witness noise levels first hand and determine whether they are acceptable.
- N. **MEGAN'S LAW (Sex Offender Database):** Notice: The California Department of Justice, sheriff's departments, police departments serving jurisdictions of 200,000 or more and many other local law enforcement authorities maintain for public access a database of the locations of persons required to register pursuant to paragraph (1) of subdivision (a) of Section 290.4 of the Penal Code. The database is updated on a quarterly basis and a source of information about the presence of these individuals in any neighborhood. The Department of Justice also maintains a Sex Offender Identification Line through which inquiries about individuals may be made. This is a "900" telephone service. Callers must have specific information about individuals they are checking. Information regarding neighborhoods is not available through the "900" telephone service.
- O. **FURTHER INQUIRIES:** Buyer is advised to make further inquiries and inspections and to consult government agencies, lenders, insurance agents, architects and other appropriate persons and entities concerning the use of the Property under applicable building, energy, electrical, plumbing, mechanical, zoning, fire, health and safety codes and for evaluation of potential hazards.

VERIFICATION: Brokers have not verified and will not personally verify any of the items above, unless otherwise agreed in writing.

Buyer's Initials [Signature]Seller's Initials [Signature]



PRDS® AS-IS ADDENDUM



THIS "AS-IS" ADDENDUM is hereby made part of the Real Estate Purchase Contract ("Contract") dated 05/28/2003 made by the Buyer: JE Hoffman for the purchase of 940 Elizabeth St City of San Francisco County of San Francisco, CA ("Property").

1. In further consideration of the price and terms of the sale of the Property, Buyer agrees that Buyer is purchasing ~~the Property in its present, existing condition, "AS-IS" and "WHERE-IS,"~~ without any obligation of Seller to make any repairs or changes, and without any warranties or representations, expressed or implied, regarding its condition.
2. Buyer and Seller agree that this ADDENDUM shall supersede and render without force or effect (a) any and all provisions in the Contract that would otherwise make Seller responsible to make repairs or for inspections, certifications or work relating to Structural Pest Control and (b) any and all provisions in the Contract under which Seller warrants that the Property's components, systems and appliances are operative, in working order, and free of damage or defect.
3. Buyer acknowledges the importance of making a thorough inspection of the Property, including both the land and all improvements located thereon. Buyer acknowledges that Buyer has been provided the opportunity to perform such inspections as well as to obtain information regarding zoning regulations, other governmental requirements, site and physical conditions, and other matters affecting the use and condition of the Property. Buyer takes responsibility for obtaining full and comprehensive inspections of the Property by competent, professional contractors, inspectors and other experts.
4. Seller agrees to permit Buyer and Buyer's representatives reasonable access to the Property to complete Buyer's inspections; provided, however, that no inspections may be made by any building department inspector or other government employee without the prior written consent of Seller, which shall not be unreasonably withheld or delayed.
5. Buyer warrants and represents that, with respect to the condition of the Property, Buyer will rely entirely on Buyer's own investigation and information, if any, and not on any information or representations made by Seller or anyone acting on Seller's behalf.
6. Unless otherwise provided to the contrary in the Contract, (a) Buyer shall retain all contingency rights (including those of physical inspection of the Property) provided in the Contract; (b) Seller shall keep and maintain the Property and its improvements in substantially the same condition they were in as of the date of "Acceptance" (as defined in the Contract); and (c) Seller shall remove all Seller's personal property and debris from the Property prior to close of escrow and shall leave the Property in broom clean condition.
7. Nothing contained in this ADDENDUM shall relieve or be deemed to relieve Seller of the duty to disclose or otherwise notify Buyer of conditions known by Seller to exist on or about the Property as required pursuant to applicable law, or to relieve Seller of Seller's obligations with respect to smoke detectors and the water heater.
8. Buyer and Seller agree there are ☒ no exceptions ☐ following exceptions:

Upon its execution by both parties, the above terms are made an integral part of the aforementioned agreement:

Date:

Buyer:

Buyer:

Date:

Seller:

Seller:



CALIFORNIA
ASSOCIATION
OF REALTORS®

ADDENDUM

(C.A.R. Form ADM, Revised 10/01)

No. 1

The following terms and conditions are hereby incorporated in and made a part of the: ☒ Residential Purchase Agreement,
☐ Manufactured Home Purchase Agreement, ☐ Business Purchase Agreement, ☐ Residential Lease or Month-to-Month Rental
Agreement, ☐ Vacant Land Purchase Agreement, ☐ Residential Income Property Purchase Agreement, ☐ Commercial Property
Purchase Agreement, ☐ other _____

dated May 28, 2003, on property known as 940 Elizabeth St.

in which Thomas R. Lloyd is referred to as ("Buyer/Tenant")
and J E Hoffman is referred to as ("Seller/Landlord").

1) Tenant agrees to pay any and all expenses associated with said property including but not limited to property taxes, repairs of any nature, property insurance, etc.

2) The property taxes will be billed out to tenant upon receipt. Tenant must pay taxes to JE Hoffman 15 days prior to due date. Property insurance must be paid by tenant to JE Hoffman upon billing. If tenant does not pay taxes and insurance as billed by the specified due dates, the amount due will accrue interest at the rate of 1% per month. Not paying either taxes or insurance by specified due date shall constitute a default.

The foregoing terms and conditions are hereby agreed to, and the undersigned acknowledge receipt of a copy of this document.

Date _____

Buyer/Tenant Thomas R. Lloyd

Buyer/Tenant _____

Date _____

Seller/Landlord J E Hoffman

Seller/Landlord _____

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ADM-11 REVISED 10/01 (PAGE 1 OF 1)

Reviewed by _____
Broker or Designee _____ Date _____



ADDENDUM (ADM-11 PAGE 1 OF 1)

Keller Williams-Silicon Valley 2542 S. Bascom Avenue
Phone: (408) 323 5800 Fax: (408) 540 1770

Campbell CA 95008
Lisa Grisalin

T6108929.ZFX

Plaintiff's EOR-425



CALIFORNIA
ASSOCIATION
OF REALTORS®

OPTION AGREEMENT

To be used with a purchase agreement. May
also be used with a lease.

Date May 28, 2003, at Fresno, California
_____, ("Optionor"), grants to
_____, ("Optionee"),
an option ("Agreement") to purchase the real property and improvements situated in (city) San Francisco
_____, County of San Francisco
California, described as 940 Elizabeth St. ("Property") as specified in the
attached: ☐ Real Estate Purchase Agreement ☐ Other _____, which is incorporated
by this reference as a part of this Agreement, on the following terms and conditions.

1. OPTION CONSIDERATION:

A. Fifteen Thousand Dollars and 00/99 Dollars \$ 15,000.00
☐ (If checked) and/or (circle one), the amount specified in paragraph 6B.
B. By ☐ cash, ☐ cashier's check, ☐ personal check, or ☒ To be paid in Escrow

made payable to JE Hoffman

C. ☐ Payable upon execution of this Agreement,
OR ☐ Payable within _____ days after acceptance of this Agreement, by which time Optionee shall have completed a
due diligence investigation and accepted the condition of the Property. At least 5 (or _____) days before expiration of this time
period, Optionor shall provide to Optionee (i) any mandatory disclosures (such as those required by paragraph 7), (ii) a
preliminary title report, and (iii) _____
OR ☒ All Disclosures provided w/in 10 days of Optionee exercising Option

D. If payment is not made by the time specified in paragraph 1C above, this Agreement shall become immediately null and void.
E. If this Option is exercised, ☐ all, or ☒ \$ 0, of the Option Consideration shall be applied toward
Optionee's down payment obligations under the terms of the attached purchase agreement, upon close of escrow of that
agreement. Optionee is advised that the full amount of the option consideration applied toward any down payment may not be
counted by a lender for financing purposes.

2. OPTION PERIOD: The Option shall begin on (date) June 30, 2003, and shall end at 11:59 p.m.
(or at ☐ _____), on (date) June 30, 2005

3. MANNER OF EXERCISE: Optionee may exercise the Option only by delivering a written unconditional notice of exercise, signed
by Optionee, to Optionor, or JE Hoffman, who is authorized to receive it, no earlier than
_____ and no later than April 15, 2005

A copy of the unconditional notice of exercise shall be delivered to the Brokers identified in this Agreement.

4. EFFECT OF DEFAULT ON OPTION: Optionee shall have no right to exercise this Option if Optionee has not performed any
obligation imposed by, or is in default of, any obligation of this Agreement, any addenda, or any document incorporated by
reference.

5. NON-EXERCISE: If the Option is not exercised in the manner specified, within the option period or any written extension thereof, or
if it is terminated under any provision of this Agreement, then:

- The Option and all rights of Optionee to purchase the Property shall immediately terminate without notice; and
- All Option Consideration paid, rent paid, services rendered to Optionor, and improvements made to the Property, if any, b
Optionee, shall be retained by Optionor in consideration of the granting of the Option; and
- Optionee shall execute, acknowledge, and deliver to Optionor, within 5 (or _____) calendar days of Optionor's request, a
release, quitclaim deed, or any other document reasonably required by Optionor or a title insurance company to verify the
termination of the Option.

Optionee and Optionor acknowledge receipt of copy of this page, which constitutes Page 1 of 3 Pages.

Optionee's Initials (_____) (JEH) Optionor's Initials (_____) (JEH)

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REVISED 10/98

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Reviewed by Broker
or Designee _____
Date _____



OPTION AGREEMENT (OA-11 PAGE 1 OF 3)

Line Graphics
Keller Williams-Silicon Valley 2542 E. Bascom Avenue, Campbell, CA 95008

CA 95008

EXHIBIT B

Fax: (408) 3401770

753919921
134

Plaintiff's EOR-426

Property Address: 940 Elizabeth St., San Francisco, CA 94114Date: May 28, 20036. ☒ **LEASE (If checked):**

The attached lease agreement, dated May 28, 2003, between Optionee as Tenant and Optionor as Landlord, is incorporated by reference as part of this Agreement.

B. \$ 0 per month of rent actually paid by Optionee shall be treated as Option Consideration pursuant to paragraph 1.

C. The lease obligations shall continue until termination of the lease. If the Option is exercised, the lease shall continue until the earliest of (i) the date scheduled for close of escrow under the purchase agreement, or as extended in writing, (ii) the close of escrow of the purchase agreement, or (iii) mutual cancellation of the purchase agreement.

D. In addition to the reason stated in paragraph 4, Optionee shall have no right to exercise this Option if Optionor, as landlord, has given to Optionee, as tenant, two or more notices to cure any default or non-performance under the terms of the lease.

7. **DISCLOSURE STATEMENTS:** Unless exempt, if the Property contains one-to-four residential dwelling units, Optionor must comply with Civil Code §1102 et seq., by providing Optionee with a Real Estate Transfer Disclosure Statement and Natural Hazard Disclosure Statement.

8. **RECORDING:** Optionor or Optionee shall, upon request, execute, acknowledge, and deliver to the other a memorandum of this Agreement for recording purposes. All resulting fees and taxes shall be paid by the party requesting recordation.

9. **DAMAGE OR DESTRUCTION:** If, prior to exercise of this Option, by no fault of Optionee, the Property is totally or partially damaged or destroyed by fire, earthquake, accident or other casualty, Optionee may cancel this Agreement by giving written notice to Optionor, and is entitled to the return of all Option Consideration paid. However, if, prior to Optionee giving notice of cancellation to Optionor, the Property has been repaired or replaced so that it is in substantially the same condition as of the date of acceptance of this Agreement, Optionee shall not have the right to cancel this Agreement.

10. **PURCHASE AGREEMENT:** All of the time limits contained in the attached purchase agreement, which begin on the date of Acceptance of the purchase agreement, shall instead begin to run on the date the Option is exercised. After exercise of this Option, if any contingency in the attached purchase agreement, including but not limited to any right of inspection or financing provision, is not satisfied or is disapproved by Optionee at any time, all option consideration paid, rent paid, services rendered to Optionor, and improvements to the Property, if any, by Optionee, shall be retained by Optionor in consideration of the granting of the Option.

11. **NOTICES:** Unless otherwise provided in this Agreement, any notice, tender, or delivery to be given by either party to the other may be performed by personal delivery or by registered or certified mail, postage prepaid, return receipt requested, and shall be deemed delivered when mailed (except for acceptance of the offer to enter into this Agreement, which must be done in the manner specified in paragraph 16). Mailed notices shall be addressed as shown below, but each party may designate a new address by giving written notice to the other.

12. **DISPUTE RESOLUTION:** Optionee and Optionor agree that any dispute or claim arising between them out of this Agreement shall be decided by the same method agreed to for resolving disputes in the attached purchase agreement.

13. **OTHER TERMS AND CONDITIONS,** including attached supplements:

1) Residential Lease After Sale Agreement

2) Option shall remain in full force unless the terms and conditions set forth in the "Residential Lease After Sale Agreement" is in breach. Any breach under the terms of the "Residential Lease After Sale Agreement" shall make the Option null and void.

14. **ATTORNEY'S FEES:** In any action, proceeding, or arbitration between Optionee and Optionor arising out of this Agreement, the prevailing Optionee or Optionor shall be entitled to reasonable attorney's fees and costs from the non-prevailing Optionee or Optionor.

Optionee and Optionor acknowledge receipt of copy of this page, which constitutes Page 2 of 3 Pages.

Optionee's Initials () Optionor's Initials ()

REVISED 10/98

OPTION AGREEMENT (OA-11 PAGE 2 OF 3)

OFFICE USE ONLY
Reviewed by Broker
or Designee _____
Date _____



T3791899.23

135

JH

Plaintiff's EOR-427

Property Address: 940 Elizabeth St., San Francisco, CA 94114Date: May 28, 2003

15. TIME OF ESSENCE; ENTIRE CONTRACT; CHANGES: Time is of the essence. All understandings between the parties are incorporated in this Agreement. Its terms are intended by the parties as a final, complete, and exclusive expression of their agreement with respect to its subject matter, and may not be contradicted by evidence of any prior agreement or contemporaneous oral agreement. This Agreement may not be extended, amended, modified, altered, or changed, except in writing signed by Optionee and Optionor.

16. OFFER: This is an offer for an Option to purchase Property on the above terms and conditions. Unless Acceptance of Offer is signed by Optionor, and a signed copy delivered in person, by mail, or facsimile, and personally received by Optionee, or by Asher Robertson, who is authorized to receive it, by (date) June 30, 2003, at 5:00 ☐ AM ☒ PM, the offer shall be deemed revoked. Optionee has read and acknowledges receipt of a copy of the offer. This Agreement and any supplement, addendum, or modification, including any photocopy or facsimile, may be signed in two or more counterparts, all of which shall constitute one and the same writing.

OPTIONEE *Thomas A. Lloyd*

OPTIONEE

Address _____

Telephone _____

Fax _____

17. BROKER COMPENSATION: Optionor agrees to pay compensation for services as follows:

_____ to _____, Broker, and
_____ to _____, Broker,
payable upon execution of this Agreement.

18. ACCEPTANCE OF OPTION: Optionor warrants that Optionor is the owner of the Property or has the authority to execute this Agreement. Optionor accepts and agrees to grant an Option to purchase the Property on the above terms and conditions.

Checked: ☐ SUBJECT TO ATTACHED COUNTER OFFER, DATED _____.

OPTIONOR *[Signature]*

OPTIONOR

Address _____

Telephone _____

Fax _____

Real Estate Brokers are not parties to the Agreement between Optionee and Optionor.

Broker _____ By _____ Date _____

Address _____

Telephone _____ Fax _____

Broker _____ By _____ Date _____

Address _____

Telephone _____ Fax _____

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Page 3 of 3 Pages.

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Reviewed by Broker
or Designee _____
Date _____



OPTION AGREEMENT (OA-11 PAGE 3 OF 3)

15791851
136

JH

Plaintiff's EOR-428

NOTICE REQUIRED BY CALIFORNIA LAW

UNTIL YOUR RIGHT TO CANCEL THIS CONTRACT HAS ENDED, H & B PROPERTIES, LLC OR ANYONE WORKING FOR H & B PROPERTIES, LLC CANNOT ASK YOU TO SIGN OR HAVE YOU SIGN ANY DEED OR ANY OTHER DOCUMENT.

NOTICE OF CANCELLATION

DATE: May 28, 2003

YOU MAY CANCEL THIS CONTRACT FOR THE SALE OF YOUR HOUSE WITHOUT PENALTY OR OBLIGATION AT ANY TIME BEFORE 6-4-03 TIME 12:01 AM

Seller has the right to cancel until midnight of the 5th business day following the day on which Seller signs contract. ("Business Day" means any day except Sunday/holidays) or until 8:00 A.M. on day of foreclosure sale, whichever occurs first.

TO CANCEL THIS TRANSACTION, PERSONALLY DELIVER A SIGNED AND DATED COPY OF THIS CANCELLATION NOTICE OR SEND A TELEGRAM TO:

BUYER Jell Hoffman ADDRESS 5132 N. Palm Ave #103
Fresno, CA 93704

NOT LATER THAN: DATE 6/4/03 TIME 12:01 am

I HEREBY CANCEL THIS TRANSACTION

Seller _____ Date _____

Seller _____ Date _____

I HAVE RECEIVED THIS NOTICE TO CANCEL.

Buyer _____ Date _____

Thomas H. Lloyd

[Signature]



CALIFORNIA
ASSOCIATION
OF REALTORS®

RESIDENTIAL LEASE AFTER SALE

Seller in Possession After Close of Escrow

JE Hoffman

Thomas R. Lloyd

("Landlord") or

("Tenant") agree as follow

1. PROPERTY:

- A. Landlord rents to Tenant and Tenant rents from Landlord, the real property and improvements described as 940 Elizabeth St., San Francisco, CA 94114 ("Premises")
- B. The following personal property is included None

2. SALE AGREEMENT: Landlord as Buyer, and Tenant as Seller, have entered into a purchase and sale agreement for the real property described above. Close of escrow for that agreement is scheduled to occur on (date) June 30, 2003.

3. TERM: The term begins on the date that escrow closes on the purchase and sale agreement ("Commencement Date") (Check A or B):

- ☒ A. Month-to-month and continues as a month-to-month tenancy. Either party may terminate the tenancy by giving written notice to the other least 30 days prior to the intended termination date, subject to any applicable local laws. Such notice may be given on any date.
- ☐ B. Lease and shall terminate on (date) _____ at _____ ☐ AM ☐ PM.
- Any holding over after the term of this Agreement expires, with Landlord's consent, shall create a week-to-week tenancy that either party may terminate on 7 days written notice. Rent shall be at a rate equal to the prorated rent for the immediately preceding period and unless otherwise notified by Landlord is payable in advance. All other terms and conditions of this Agreement shall remain in full force and effect.

4. RENT:

- A. Tenant agrees to pay rent at the rate of \$3,525.64 per month for the term of the Agreement.
- B. Rent is payable in advance on the 1st (or ☐ day) of each calendar month, (or if checked ☐ in full for the entire rental period at close of escrow on the purchase and sale agreement and is delinquent on the next day.
- C. If Commencement Date falls on any day other than the 1st of the month, rent shall be prorated based on a 30-day period. If Tenant has paid a full month's rent in advance of Commencement Date, rent for the second calendar month shall be prorated based on a 30-day period.
- D. PAYMENT: The rent shall be paid to (name) JE Hoffman, at (address) 5132 N. Palm Ave., Suite 103, Fresno, CA 93704, or at any other location specified by Landlord in writing to Tenant.

5. SECURITY DEPOSIT:

- A. Tenant agrees to pay \$ _____ as a security deposit. Security deposit will be: ☐ given to the Landlord of the Premises; ☐ held in Landlord's Broker's trust account; or ☐ held in escrow to be used for the purchase and sale agreement and released to Landlord upon the close of escrow under the purchase and sale agreement.
- B. All or any portion of the security deposit may be used, as reasonably necessary, to: (1) cure Tenant's default in payment of rent, Late Charge, non-sufficient funds ("NSF") fees, or other sums due; (2) repair damage, excluding ordinary wear and tear, caused by Tenant or by a guest licensee of Tenant; (3) clean Premises, if necessary, upon termination of tenancy; and (4) replace or return personal property or appurtenances. SECURITY DEPOSIT SHALL NOT BE USED BY TENANT IN LIEU OF PAYMENT OF LAST MONTH'S RENT. If all or any portion of security deposit is used during tenancy, Tenant agrees to restate the total security deposit within five days after written notice is delivered to Tenant. Within three weeks after Tenant vacates the Premises, or immediately upon cancellation of the purchase and sale agreement, Landlord shall: (1) furnish Tenant with an itemized statement indicating the amount of any security deposit received and the basis for its disposition, and return any remaining portion of security deposit to Tenant.
- C. No interest will be paid on security deposit unless required by local ordinance.
- D. If security deposit is held by Owner, Tenant agrees not to hold Broker responsible for its return. If security deposit is held in Owner's Broker's trust account, and Broker's authority is terminated before expiration of this Agreement, and security deposits are released to someone other than Tenant, then Broker shall notify Tenant, in writing, where and to whom security deposit has been released. Once Tenant has been provided with notice, Tenant agrees not to hold Broker responsible for security deposit.
- E. Landlord and Tenant are advised that release of funds from escrow requires separate written instructions.

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REVISION DATE 10/2000
RLAS-11 (PAGE 1 OF 4)

Landlord and Tenant acknowledge receipt of copy of this page.

Landlord's Initials (JE)

Tenant's Initials (TL)

Reviewed by

Broker or Designee _____ Date _____



RESIDENTIAL LEASE AFTER SALE (RLAS-11 PAGE 1 OF 4)

Lisa Grisdin
Keller Williams-Silicon Valley 2542 S. Bascom Avenue, Campbell, CA 95008

Phone:

EXHIBIT D

73791809

JH

130

Plaintiff's EOR-430

Premises: 940 Elizabeth St., San Francisco, CA 94114Date: May 28, 2003

C. MOVE-IN COSTS RECEIVED/DUE:

Category	Total Due	Payment Received	Balance Due	Date Due
Rent from <u>06/30/2003</u> to <u>07/31/2003</u> (date)	<u>\$3,715.49</u>		<u>\$3,715.49</u>	<u>06/30/2003</u>
*Security Deposit				
Other				
Other				
Total	<u>\$3,715.49</u>		<u>\$3,715.49</u>	

*The maximum amount that Landlord may receive as security deposit, however designated, cannot exceed two month's rent for an unfurnished premises, and three month's rent for a furnished premises.

7. PARKING: (Check A or B)

☒ A. Parking is permitted as follows: As per city and county ordinances

OR ☐ B. Parking is not permitted on the Premises.

8. STORAGE: (Check A or B)

☒ A. Storage is permitted as follows: As per city and county ordinances

The right to storage space ☐ is, ☐ is not, included in the rent charged pursuant to paragraph 3. If not included in rent, storage space shall be an additional \$_____ per month. Tenant shall store only personal property that Tenant owns, and shall not store property that is claimed by another or in which another has any right, title, or interest. Tenant shall not store any improperly packaged food or perishable goods, flammable materials, explosives, or other inherently dangerous material.

OR ☐ B. Storage is not permitted on the Premises.

9. LATE CHARGE/NSF CHECKS: Tenant acknowledges that either late payment of rent or issuance of a non-sufficient funds ("NSF") check may cause Landlord to incur costs and expenses, the exact amount of which are extremely difficult and impractical to determine. These costs may include, but are not limited to, processing, enforcement and accounting expenses, and late charges imposed on Landlord. If any installment of rent due from Tenant is not received by Landlord within 5 (or ☐) calendar days after date due, or if a check is returned NSF, Tenant shall pay Landlord, respectively, an additional sum of \$ 215.74 as a Late Charge and \$25.00 as a NSF fee, either or both of which shall be deemed additional rent. Landlord and Tenant agree that these charges represent a fair and reasonable estimate of the costs Landlord may incur. Reason of Tenant's late or NSF payment. Any Late Charge or NSF fee due shall be paid with the current installment of rent. Landlord's acceptance of any Late Charge or NSF fee shall not constitute a waiver as to any default of Tenant. Landlord's right to collect a Late Charge or NSF fee shall not be deemed an extension of the date rent due under paragraph 3, or prevent Landlord from exercising any other rights and remedies under the Agreement, and as provided by law.

10. CONDITION OF PREMISES: Tenant has examined Premises, all furniture, furnishings, appliances, landscaping, if any, and fixtures, including smoke detector(s) and acknowledges that these items are clean and in operative condition, with the following exception:

No Exceptions

11. UTILITIES: Tenant agrees to pay for all utilities and services, and the following charges: _____, which shall be paid for by Landlord. If any utility are not separately metered, Tenant shall pay Tenant's proportional share, as reasonably determined by Landlord.

12. OCCUPANTS: The Premises are for the sole use as a personal residence by the following named persons only: Thomas R. Lloyd

13. PETS: No animal or pet shall be kept on or about the Premises without Landlord's prior written consent, except _____

14. RULES/REGULATIONS: Tenant agrees to comply with all rules and regulations of Landlord that are at any time posted on the Premises or delivered to Tenant. Tenant shall not, and shall ensure that guests and licensees of Tenant shall not, disturb, annoy, endanger, or interfere with other tenants in the building or neighbors, or use the Premises for any unlawful purposes, including, but not limited to, using, manufacturing, selling, storing, transporting illicit drugs or other contraband, or violate any law or ordinance, or commit a waste or nuisance on or about the Premises.

15. CONDOMINIUM/PLANNED UNIT DEVELOPMENT: ☐ (If checked) The Premises is a unit in a condominium, planned unit, or other development governed by an owner's association. The name of the homeowner's association ("HOA") is _____

Tenant agrees to comply with all covenants, conditions and restrictions, bylaws, rules, regulations and decisions of HOA. Landlord shall provide Tenant copies of rules and regulations, if any. Tenant shall reimburse Landlord for any fines or charges imposed by HOA or other authorities, due to any violation by Tenant, or the guests or licensees of Tenant.

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REVISION DATE 10/2000
RLAS-11 (PAGE 2 OF 4)

Landlord and Tenant acknowledge receipt of copy of this page.

Landlord's Initials (TL)

Tenant's Initials (TL)

Reviewed by

Broker or Designee _____ Date _____



RESIDENTIAL LEASE AFTER SALE (RLAS-11 PAGE 2 OF 4)

T3791895

Plaintiff's EOR-432

Premises: 940 Elizabeth St., San Francisco, CA 94114

Date: May 28, 2003

30. **TENANCY STATEMENT (ESTOPPEL CERTIFICATE):** Tenant shall execute and return a tenancy statement (estoppel certificate) delivered to Tenant by Landlord or Landlord's agent within 3 days after its receipt. The tenancy statement acknowledges that this Agreement is unmodified and in full force, or in full force as modified, and states the modifications. Failure to comply with this requirement shall be deemed Tenant's acknowledgment that the tenancy statement is true and correct, and may be relied upon by a lender or purchaser.
31. **JOINT AND INDIVIDUAL OBLIGATIONS:** If there is more than one Tenant, each one shall be individually and completely responsible for the performance of all obligations of Tenant under this Agreement, jointly with every other Tenant, and individually, whether or not in possession.
32. ☐ **MILITARY ORDNANCE DISCLOSURE:** (If applicable and known to Landlord) Premises is located within one mile of an area once used for military training, and such area may contain potentially explosive munitions.
33. **OTHER TERMS AND CONDITIONS/SUPPLEMENTS:** See Addendum #1

The following ATTACHED supplements are incorporated in this Agreement:

34. **ATTORNEY'S FEES:** In any action or proceeding arising out of this Agreement, the prevailing party between Landlord and Tenant shall be entitled to reasonable attorney's fees and costs.
35. **ENTIRE CONTRACT:** Time is of the essence. All prior agreements between Landlord and Tenant are incorporated in this Agreement which constitutes the entire contract. It is intended as a final expression of the parties' agreement, and may not be contradicted by evidence of any prior agreement or contemporaneous oral agreement. The parties further intend this Agreement to constitute the complete and exclusive statement of its terms, and that no extrinsic evidence whatsoever may be introduced in any judicial or other proceeding, if any, involving this Agreement. As provision of this Agreement that is held to be invalid shall not affect the validity or enforceability of any other provision in this Agreement.
36. **AGENCY:**
- A. **Confirmation:** The following agency relationship(s) are hereby confirmed for this transaction:
- Listing Agent (Print firm name) _____ is the agent
(check one): ☐ the Tenant exclusively; or ☐ the Landlord exclusively; or ☐ both the Tenant and Landlord.
- Selling Agent (Print firm name) _____ (If not same as Listing Agent) is the agent
(check one): ☐ the Landlord exclusively; or ☐ both the Landlord and Tenant.
- B. **Disclosure:** ☐ (If checked): The term of this lease exceeds one year. An agency disclosure form has been provided to Landlord and Tenant who each acknowledge its receipt.

Landlord and Tenant acknowledge and agree that Brokers: (a) do not guarantee the condition of the Premises; (b) cannot verify representations made by others; (c) cannot provide legal or tax advice; (d) will not provide other advice or information that exceeds the knowledge, education or experience required to obtain a real estate license. Furthermore, if Brokers are not also acting as Landlord in this Agreement, Brokers; (e) do not decide what rental rate a Tenant should pay or Landlord should accept; and (f) do not decide upon the length or other terms of tenancy. Landlord and Tenant agree that they will seek legal, tax, insurance, and other desired assistance from appropriate professionals.

Tenant Thomas R. Lloyd Date _____

Tenant _____ Date _____

Landlord 1211 Date _____
(owner or agent with authority to enter into this lease)

Landlord _____ Date _____
(owner or agent with authority to enter into this lease)

Agency relationships are confirmed as above. Real estate brokers not acting as Landlord in this Agreement are not a party to the Agreement between Landlord and Tenant.

Real Estate Broker _____ By _____ Date _____
(Selling Firm Name)

Address _____ Telephone _____ Fax _____

Real Estate Broker _____ By _____ Date _____
(Listing Firm Name)

Address _____ Telephone _____ Fax _____

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REVISION DATE 10/2000
RLAS-11 (PAGE 4 OF 4)

Reviewed by _____ Date _____
Broker or Designee



RESIDENTIAL LEASE AFTER SALE (RLAS-11 PAGE 4 OF 4)

T379187

JH

133

Plaintiff's EOR-433

ENDORSED
FILED
San Francisco County Superior Court

JUN 02 2004

GORDON PARK-LI, Clerk

BY: Deputy Clerk

DE LA VEGA-NAVARRO, Rossaly

1 TODD ROTHBARD
2 ATTORNEY AT LAW #67351
3 4261 Norwalk Drive, #107
4 San Jose, California 95129
5 Tel. : (408)244-4200

6 Attorney for the Plaintiff

7 SUPERIOR COURT FOR THE SAN FRANCISCO JUDICIAL DISTRICT
8 UNLIMITED CIVIL JURISDICTION
9 COUNTY OF San Francisco, STATE OF CALIFORNIA

10 H & B PROPERTIES, LLC

Plaintiff,

11 vs.

12 THOMAS R. LLOYD,

13 DOES I through V, inclusive

Defendant(s).

CUD-04-610594

No.

COMPLAINT FOR
UNLAWFUL DETAINER

*The total damages sought
in this case are \$41,829.29
plus \$119.85 per day
beginning June 1, 2004.

14 Plaintiff alleges:

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16
17 At all times herein mentioned, plaintiff was, and now is, a limited liability corporation
18 licensed to do business in the State of California and doing business in the
19 above entitled County and Judicial District.

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21 The real property owned by plaintiff, possession of which is sought
22 in this action, is situated at 940 Elizabeth Street, San Francisco, 94114,
23 San Francisco County, California, in the above named
24 Judicial District.

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UNLAWFUL DETAINER

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EXHIBIT E
Plaintiff's EOR-434

III

The true names and capacities, whether individual corporate, associate, or otherwise, of defendant(s) herein named as DOES I through V inclusive, are unknown to plaintiff, who therefore sues said defendant(s) by such fictitious names and prays leave to amend this complaint to show the true names and capacities as they become known.

IV

On or about June 30, 2003, plaintiff leased to defendant(s) the above described premises on a month to month basis pursuant to a written rental agreement. A copy of said agreement is attached hereto, marked "EXHIBIT A", and made a part hereof.

V

By the terms of said agreement, defendant(s) were required to pay to plaintiff the sum of \$ 3595.64 each month as and for the rental of said premises; said sum becomes payable each month in full as of the first day of each month.

VI

Defendant(s) have not paid the following rent installments required by the terms of said agreement: \$ 41,829.29 being the total rent due and unpaid as of May 31, 2004. All of said amount accrued within the twelve month period immediately prior to the date of service of the 3-day notice. VII

On May 27, 2004, plaintiff caused to be served on defendant(s) a written notice stating the amount of rent due and requiring defendant(s) to pay the whole thereof or deliver up possession of the premises within the three days after service of the notice. A copy of said notice is attached hereto, marked "EXHIBIT B", and made a part hereof. "To the extent applicable, plaintiff has complied with all requirements of the San Rent Stabilization Ordinance."

Francisco

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VIII

More than three days have elapsed since the service of said notice but no part of said rent has been paid. Defendant(s) remain in possession of said premises without plaintiff's consent, plaintiff is entitled to possession of said premises.

IX

The reasonable rental value of said premises is the sum of \$ 119.85 per day, and damages to plaintiff caused by defendant's unlawful detention will accrue at said rate from June 1, 2004 and will continue to accrue at said rate as long as defendant(s) remain in possession.


X

Said agreement provided for the payment of attorney's fees, costs, etc. to the prevailing party in the event of litigation to enforce its terms. Plaintiff has been compelled to commence litigation and hence is entitled to recover the sum of \$2400.00 as attorney's fees or such larger sum as may prove justified pending proof at time of trial or hearing herein.

WHEREFORE, plaintiff prays judgment as follows:

1. For restitution of possession of said premises.
2. For unpaid rent in the total sum of \$41,829.29.
3. For damages at the rate of \$119.85 per day from June 1, 2004 for each day defendant(s) continue in possession of said premises.
4. For attorney's fees of at least \$2400.00.
5. For costs herein, and for such other and further relief as to the Court may seem just.

Dated: June 2, 2004


TODD ROTHBARD
Attorney for the Plaintiff

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UNLAWFUL DETAINER

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VERIFICATION

1 I, TODD ROTHBARD, hereby declare:

2 I am the attorney for the plaintiff in the above entitled
3 action, and as such make this VERIFICATION for and on behalf of
4 said plaintiff.

5 ~~I have read the foregoing COMPLAINT FOR UNLAWFUL DETAINER~~
6 ~~and know the contents thereof. Based upon information and/or~~
7 belief, I believe the facts stated therein to be true.

8 The reason that the foregoing COMPLAINT is verified by me
9 and not by a representative of the plaintiff is that such
10 representative is absent from the county where I have my office.

11 I declare, under penalty of perjury, that the foregoing is
12 true and correct, and that this VERIFICATION is executed on
JUN 02 2004 at San Jose, Santa Clara County, California.

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23 TODD ROTHEARD
Attorney for Plaintiff
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ELB-553

SETTLEMENT AND MUTUAL RELEASE AGREEMENT

This Settlement and Mutual Release Agreement ("the Agreement") is entered into by the following parties:

1. THOMAS R. LLOYD, his assigns, successors, representatives, agents, attorneys and employees of any of them, hereinafter referred to as "LLOYD";
2. H & B PROPERTIES, L.L.C., its assigns, successors, representatives, partners, members, agents, attorneys and employees of any of them, hereinafter referred to as "H & B";
4. J. EDWARDS COMPANY INVESTMENT GROUP, INC., its assigns, successors, representatives, shareholders, officers, directors, agents, attorneys and employees of any of them, hereinafter referred to as "J. EDWARDS"; and
3. JEFFREY E. HOFFMAN, his assigns, successors, representatives, agents, attorneys and employees of any of them, hereinafter referred to as "HOFFMAN".

This Agreement is entered into by the parties with reference to the following facts:

RECITALS

- A. WHEREAS, LLOYD was the owner of real property commonly known as 940 Elizabeth Street, San Francisco, California ("the Property"); and
- B. WHEREAS, LLOYD came in contact with HOFFMAN at J. EDWARDS in his efforts to remedy a personal financial situation; and
- C. WHEREAS, HOFFMAN is a member of H & B, which is in the business of investing in real property; and
- D. WHEREAS, H & B purchased the Property from LLOYD, giving LLOYD a one-year lease ("the Lease") and an option to repurchase the Property ("the Option" and the Repurchase Agreement") within one year following the purchase by H & B; and
- E. WHEREAS, LLOYD fell behind in his lease payments, and

EXHIBIT F

F. WHEREAS, H & B served on LLOYD a Three-Day Notice to Pay Rent or Quit, which was followed by the filing of an unlawful detainer complaint in San Francisco County Superior Court, identified as Case No. CUD04-610594 ("the Action"); and

G. WHEREAS, LLOYD filed an Answer claiming, inter alia, that the sales transaction was a disguised security device and thereby unenforceable;

The parties now desire to resolve their differences on the terms and conditions set forth hereinbelow.

AGREEMENT AND MUTUAL GENERAL RELEASE

1.a. In consideration of the foregoing, and the promises and conditions set forth hereinbelow, LLOYD, H & B, HOFFMAN and J. EDWARDS hereby mutually release and forever discharge each other and their respective heirs, officers, directors, trustees, shareholders, members, agents, assigns, successors, servants, employees, attorneys, subsidiaries, heirs, executors and administrators of and from any and all debts, demands, actions, causes of action, judgments, liabilities, liens and claims of every kind and nature whatsoever, whether known or unknown, liquidated or contingent, arising from the Action or arising from or related to the Property, the purchase by H & B, the Lease, the Option or the Repurchase Agreement, except as set forth hereinbelow.

b. It is understood and agreed that this is a full and final release applying to all unknown and unanticipated injuries, or other damages to the parties arising from the matters asserted in the Action, or in any way related to the Property. LLOYD, H & B, HOFFMAN and J. EDWARDS, and each of them, expressly waive the provisions of California Civil Code Section 1542 which provides as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

2. The purpose of this Agreement is to resolve claims which are disputed, and to reach a compromise. Nothing contained herein shall be deemed as an admission by any party to this Agreement of any liability and/or wrongdoing of any kind, all such liability and/or wrongdoing being expressly denied.

3. Upon execution of this Agreement by H & B, H & B shall forbear continuance of prosecution of the Action, as well as forbearance of any other forms of enforcement of H & B's rights under the Lease Agreement or Option Agreement for a period of 90 days commencing on July 12, 2004.

4. LLOYD and H & B shall execute within one week following execution of this Agreement, a Stipulation for Entry of Judgment ("the Stipulation") in the Action. The Stipulation shall be for entry of a money judgment in the amount of \$ 60,886.17, plus attorneys' fees and court costs in the amount of \$3,500, as well as for immediate possession of the Property. The Stipulation shall be held by H & B, without filing for at least 90 days from the July 12, 2004, the date of the oral agreement between LLOYD, HOFFMAN and H & B ("the forbearance period"), allowing LLOYD that amount of time to dispose of or repurchase the Property. A copy of the Stipulation is attached hereto as Exhibit "A".

5. During the 90-day forbearance period, LLOYD may do either of the following: a) find a buyer willing to complete a purchase of the Property within the 90 days; or b) repurchase the Property, himself, by paying all monies now due H & B as well as those which will come due during the 90-day forbearance period as a result of LLOYD'S status as a holdover tenant, and paying off all existing debt within the 90-day period.

6. In the event that LLOYD does not perform either under paragraph 5(a) or 5(b), above, then, at the end of the 90-day forbearance period, H & B shall have the right to file the Stipulation with the Court and obtain a court Judgment in the Action, and may proceed with a Writ of Possession as provided by California law. Upon obtaining possession, H & B shall immediately

list the Property for fair market value. Upon the sale of the Property, all secured debt and H & B's demand amount shall first be satisfied and all remaining monies shall be paid to LLOYD.

7. In the event that LLOYD does perform under either 5(a) or 5(b), and the default under the lease agreement is cured, H & B shall cause to be filed a Request for Dismissal of the Unlawful Detainer action in its entirety, and the Stipulation shall be null and void.

8. The parties acknowledge and agree that they have been represented in the negotiation and review of this Agreement by counsel of their own choosing, or have had the opportunity to do so, that they have read this Agreement or had it read to them by counsel, that they understood the Agreement and are fully aware of the contents and legal effect of the Agreement.

9. This Agreement is freely and voluntarily entered into by each party. LLOYD, HOFFMAN, H & B and J. EDWARDS represent and warrant to each other that they have not assigned or transferred any of their rights or interest in the matters being released hereunder, and they will indemnify and hold harmless each other against any and all costs, damages or expenses, including attorneys' fees, arising from any such assignment or transfer.

10. The parties acknowledge and agree that no promises or inducements have been made or offered to them except as set forth in this Agreement and further this Agreement is being executed by the LLOYD, H & B, HOFFMAN and J. EDWARDS without any reliance on any statement or representation by any employee or agent of the other party except as may be set forth herein.

11. In the event it shall become necessary to consult with an attorney or to commence a suit or bring a motion in connection with the enforcement of any provision of this Agreement, or any right granted herein, the prevailing parties shall be entitled to recover from the other party attorneys' fees and costs incurred therein.

12. This writing constitutes the entire Agreement between the parties respecting the subject matter herein, and any and all prior discussions that have taken place, negotiations and

understandings are merged herein. No party shall be bound by any representation, warranty, promise, statement or information, made by any party or the representatives of any party unless it is specifically set forth herein. No modification or waiver of this Agreement is binding unless it is in writing and signed by each of the parties.

13. This Agreement shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors and assigns of the parties.

14. This Agreement may be executed in counterparts;

IN WITNESS HEREOF the parties hereto have caused this Agreement to be duly executed.

DATED: 07/2/04

Thomas R. Lloyd
Thomas Lloyd

Approved as to form:

LAW OFFICES OF EDWARD L. BLUM, P.C.
By Edward L. Blum
Edward L. Blum, attorneys for Thomas Lloyd

DATED: _____

H & B PROPERTIES
By Jeffrey E. Hoffman
Jeffrey E. Hoffman, Member

DATED: _____

J. EDWARDS COMPANY
INVESTMENT GROUP, INC.
By Jeffrey E. Hoffman
Jeffrey E. Hoffman, President

DATED: _____

Jeffrey E. Hoffman
Jeffrey E. Hoffman, Individually

Approved as to Form:

LAW OFFICE OF JULIE B. GUSTAVSON
By Julie B. Gustavson
Julie B. Gustavson, Attorneys for H & B Properties, J. Edwards Company Investment Group, Inc., and Jeffrey E. Hoffman

CANB Live Database

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Miscellaneous:

05-03328 Hoffman v. Lloyd et al

U.S. Bankruptcy Court

Northern District of California

Notice of Electronic Filing

The following transaction was received from Robertson, Catherine Schlomann entered on 4/13/2006 at 2:43 PM PDT and filed on 4/13/2006

Case Name: Hoffman v. Lloyd et al

Case Number: 05-03328

Document Number: 75

Docket Text:

Declaration of Jeffrey Hoffman in opposition of *Motion for Summary Judgment* (RE: related document (s)[40] Motion for Summary Judgment/Adjudication). Filed by Plaintiff Jeffrey E. Hoffman (Attachments: # (1) Exhibit A-C to Dec. of Hoffman in Opposition to MSJ# (2) Exhibit D-F to Dec. of J. Hoffman in Opposition to MSJ) (Robertson, Catherine)

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:c:\docume~1\tamara.000\locals~1\temp\worldox\open\0001\dec of j hoffman in opp to msj (00064801).pdf

Electronic document Stamp:

[STAMP bkecfStamp_ID=1017961465 [Date=4/13/2006] [FileNumber=4698417-0] [28aff71e0cc86ee93315e62c1049d7f575242801570222ab0b515fd5e269bb9cae426dfabc4a9f7e99a20a7b442aa96d26db075c717b156a9d84db6a7f57970e]]

Document description:Exhibit A-C to Dec. of Hoffman in Opposition to MSJ

Original filename:c:\docume~1\tamara.000\locals~1\temp\worldox\open\0001\exhibits a - c to dec. of j. hoffman - opp to msj (00064802).pdf

Electronic document Stamp:

[STAMP bkecfStamp_ID=1017961465 [Date=4/13/2006] [FileNumber=4698417-1] [bc7a6d7836da917c8d25de39df806296cb0461bb28cd899498c90b82f0aea0c55ceSec03a965a673d078eb28c7fecc7bd94a543eabf581c3b432d837f6d0c194]]

Document description:Exhibit D-F to Dec. of J. Hoffman in Opposition to MSJ

Original filename:c:\docume~1\tamara.000\locals~1\temp\worldox\open\0001\exhibits d - f of dec. of j. hoffman - opp to msj (00064803).pdf

Electronic document Stamp:

[STAMP bkecfStamp_ID=1017961465 [Date=4/13/2006] [FileNumber=4698417-2] [bef9c77dd9a42dd7da8b0aeb67d7138b0584be7445804e6b9affae6d2fb9deb129e4b84130b5f36c1cd595e4e9ed8feba6de683d04227799dcb13f8f7db0ae53]]

05-03328 Notice will be electronically mailed to:

Jeffrey J. Goodrich endstay@hotmail.com

CANB Live Database

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Jerry R. Hauser jhauser@pghllp.com

Catherine Schlomann Robertson crobertson@pahl-gosselin.com

05-03328 Notice will not be electronically mailed to:

Norcal Financial, Inc.

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